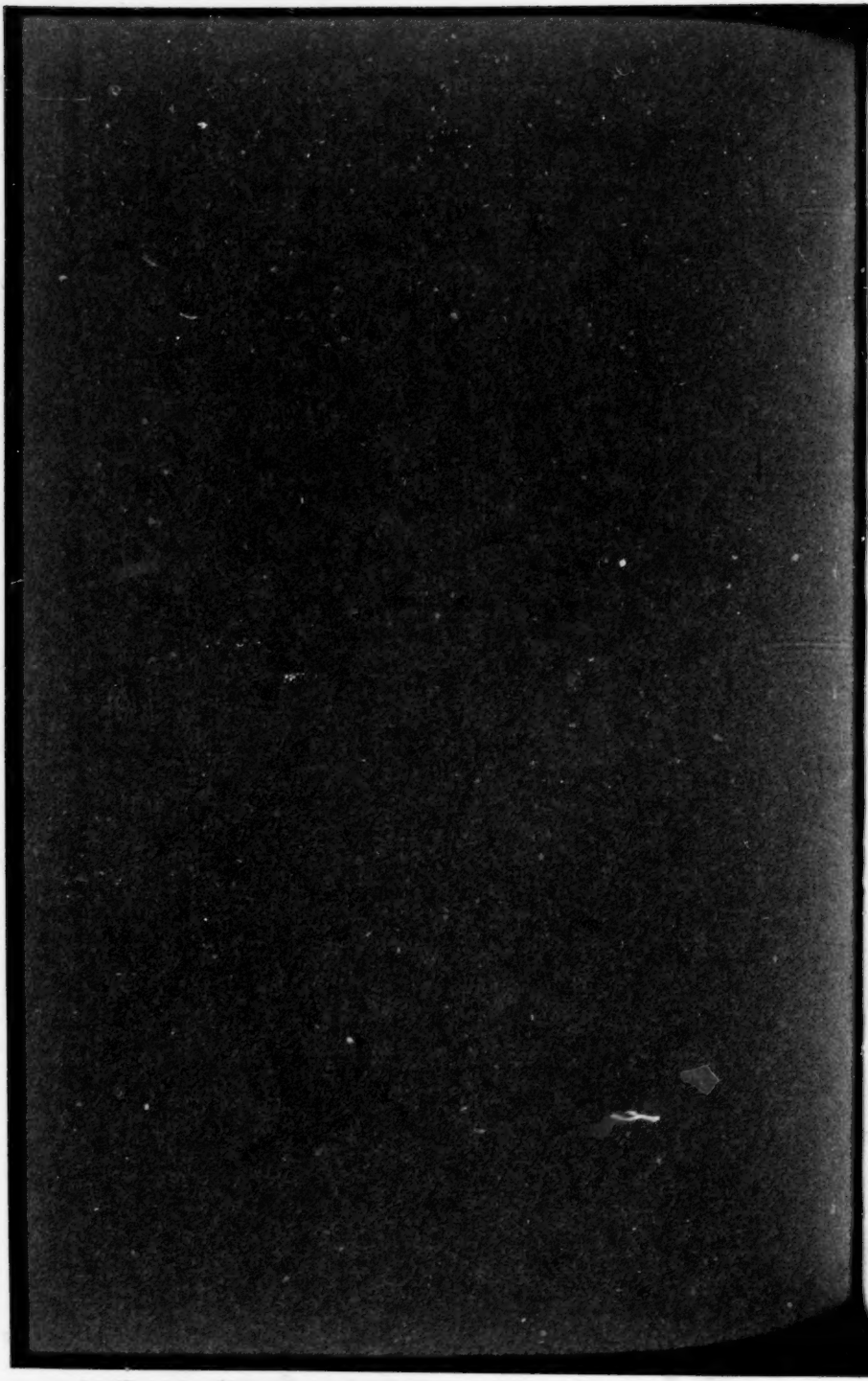

BLEED THROUGH– POOR COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 271

WILLIAM ADAMS, PETITIONER,

vs.

STATE OF MARYLAND

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MARYLAND

INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOV. 24, 1953.

—1690

[fol. 1] **APPENDIX TO APPELLANTS BRIEF**

IN THE CRIMINAL COURT OF BALTIMORE

WILLIAM ADAMS, Petitioner,

vs.

STATE OF MARYLAND

DOCKET ENTRIES

Docket 1951, May Term

Number 3393

Charge: Conspiracy

Prosecuting Witness—Captain A. Emerson

Appearance of Joseph H. A. Rogan and J. Francis Ford, Attorneys as to Adams. E. L. Perkins and R. Palmer Ingram, Attorneys as to Rouse—Filed.

August 15, 1951. Presentment filed — e. d. — Capias Issued—Cepi, on Bail.

August 16, 1951. Recognizance taken as to Adams, V. G. Adams—$5,000.00 As to Rouse, A. Gatewood and E. Bass —$10,000.00.

August 24, 1951. Indictment filed. Copy of Indictment Served. Receipt Filed and Joined by State with Indictment No. 3392.

September 6, 1951. Motion for Discovery filed.

September 27, 1951. Answer to Motion for Discovery filed.

October 2, 1951. Exceptions to Answer to Motion for Discovery filed.

October 29, 1951. Exceptions overruled—Judge Sherbow.

November 7, 1951. Appeal to the Court of Appeals of Maryland on Overruling Exceptions to Answer filed.

November 13, 1951. Ruling on Exceptions filed.

[fol. 2] November 13, 1951. Request of Judge Sherbow that the Attorney General Hall Hammond ask the Court of Appeals to expedite handling of the Appeal in this case.

November 13, 1951. Defendant's Designation of Record filed.

November 13, 1951. Transcript of Record transmitted under seal to Maurice Ogle, Clerk of the Court of Appeals of Maryland, together with check for $10.00 as filing fee—Receipt filed.

November 13, 1951. Certified copy of Transcript of Record transmitted under seal to Hall Hammond, Attorney General of Maryland.

November 13, 1951. Certified copy of Transcript of Record transmitted under seal to Jos. H. A. Rogan and Francis J. Ford, Attorneys for Appellant.

December 5, 1951. Mandate—Court of Appeals of Maryland—No. 117, October Term, 1951.

WILLIAM ADAMS

vs.

STATE OF MARYLAND

APPEAL FROM THE CRIMINAL COURT OF BALTIMORE—Filed November 14, 1951

November 23, 1951. Motion to Dismiss Appeal filed.

December 4, 1951. Per Curiam filed—Appeal Dismissed.

* * * * * * *

December 12, 1951. As to Adams—Motion to Dismiss filed.

December 13, 1951. As to Rouse—Motion to Dismiss filed.

[fol. 3] December 17, 1951. As to Adams—Answer to Motion to Dismiss filed.

December 17, 1951. As to Rouse—Answer to Motion to Dismiss filed.

December 17, 1951. Nolle Prosequi entered by State as to 2d, 3d, 4th, 5th and 6th Counts.

December 19, 1951. Motion to Dismiss Denied as filed.

December 20, 1951. Arraigned and pleads as to each, Not Guilty.

December 20, 1951. Submits under plea as to each, Not Guilty and Issue before (Sworn Jury) Sherbow, Judge.

December 21, 1951. Verdict: As to each, Guilty 1st Count.

December 21, 1951.—As to each—Sentence suspended pending a Motion for a New Trial.

December 21, 1951. As to each—Take Bail sum $10,000.00 —pending Motion for a New Trial—Sherbow, Judge.

December 21, 1951. Recognizance taken—as to Adams v. Adams—$10,000.00.

December 21, 1951. Recognizance taken—as to Rouse—S. Watkins, and M. Berman—$10,000.00.

December 26, 1951. Motion for a New Trial filed as to Rouse.

December 26, 1951. Motion for a New Trial filed as to Adams.

* * * * * * *

February 4, 1952. On February 2, 1952, in the Supreme Bench of Baltimore City, Indictment Number 3393, May Term, 1951, State of Maryland v. William Adams, et al for Conspiracy. Motion for a New Trial Granted and the case remanded for further proceedings.

[fol. 4] March 20, 1952. As to Adams, Motion for Discovery filed.

May 5, 1952. As to Adams, Answer to Motion for Discovery filed.

May 9, 1952. As to Adams, Motion to Dismiss filed.

May 13, 1952. As to Adams, Answer to Motion to Dismiss filed.

May 20, 1952. As to Rouse, Motion for Severance filed.

May 21, 1952. As to Adams, Motion to Dismiss Denied, Mason, Judge.

May 21, 1952. As to Rouse, Motion for Severance Granted, Mason, Judge.

May 23, 1952. As to Adams, Motion to Dismiss Indictment filed.

May 23, 1952. As to Adams, Motion to Dismiss Denied, Mason, Judge.

May 26, 1952. As to Adams, Arraigned and pleads, Not Guilty.

May 26, 1952. As to Adams, Submits under plea, Not Guilty and Issue before Mason, Judge.

May 26, 1952. As to Adams, Verdict: Guilty.

May 26, 1952. As to Adams, Judgment: Sentence suspended pending Motion for a New Trial.

May 26, 1952. As to Adams, take bail in sum of $10,000.00 pending Motion for New Trial—Mason, Judge.

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May 27, 1952. As to Rouse, Motion to Dismiss Denied—Mason, Judge.

May 27, 1952. Arraigned and pleads, as to Rouse, Not Guilty.

[fol. 5] May 27, 1952. Submits under plea, as to Rouse, Not Guilty and Issue before (Sworn Jury) Mason, Judge.

May 29, 1952. Verdict: As to Rouse Guilty.

May 29, 1952. Sentence suspended pending Motion for New Trial.

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May 29, 1952. As to Adams, Motion for a New Trial filed.

June 2, 1952. As to Rouse, Motion for a New Trial filed.

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November 26, 1952. On November 26, 1952, in the Supreme Bench of Baltimore City, Indictment Number 3393, May Term, 1952, the State of Maryland v. William Adams and Walter Rouse for Conspiring. Motion for a New Trial as to each, Denied.

December 2, 1952. Judgment: As to Adams, Seven (7) Years in the Maryland Penitentiary and Fined $2,000.00 and Costs, Consecutive. Sentence suspended pending an Appeal to the Court of Appeals of Maryland (Mason, Judge).

December 2, 1952. Judgment: As to Rouse Three (3) Years in the Maryland Penitentiary and Fined $2,000.00 and Costs. Consecutive. Sentence suspended pending an Appeal to the Court of Appeals of Maryland (Mason, Judge).

December 2, 1952. As to each: Take bail in the sum of

$20,000.00 pending an Appeal to the Court of Appeals of Maryland.

December 2, 1952. Recognizance as to Adams taken by: Robert J. and Matilda Young, $20,000.00.

[fol. 6] December 2, 1952. Recognizance as to Rouse taken by: (1) Vernice H. Wynn (2) John Wherby (3) Alonzo R. and Doretha Myers (4) Harry and Esther Goldscheider and (5) Carrie Hament.

December 2, 1952. As to each: An Appeal to the Court of Appeals of Maryland filed.

December 11, 1952. As to Adams, Designation of Record on Appeal to the Court of Appeals of Maryland filed.

December 20, 1952. As to Rouse, Designation of Record on Appeal to the Court of Appeals of Maryland filed.

IN THE CRIMINAL COURT OF BALTIMORE, MAY TERM, 1951

PRESENTMENT 3392—Filed August 15, 1951

The Jurors of the State of Maryland, for the body of the City of Baltimore, do on their oath present William Adams and certain persons unknown to the Jurors aforesaid did on the 20th day of August 1949 and thence continually until the 15th day of August 1951, unlawfully conspire together unlawfully to violate the Lottery Laws of the State of Maryland*

IN THE CRIMINAL COURT OF BALTIMORE, MAY TERM, 1951

PRESENTMENT 3392, 3393—Filed August 24, 1951

The Jurors of the State of Maryland, for the body of the City of Baltimore, do on their oath present that William Adams and Walter Rous[illegible] alias John Roush did on the 1st day of August 1947 and thence continually until the 15th day of August 1951, unlawfuly conspire together and with

* Then follows list of 23 witnesses. Maurice Jones, 710 Peach Orchid Lane, Turner Station, included therein.

certain other persons unknown to the Jurors aforesaid to [fol. 7] violate the Lottery Laws of the State of Maryland.*

IN THE CRIMINAL COURT OF BALTIMORE, MAY TERM, 1951

PRESENTMENT 3393—Filed August 15, 1951

The Jurors of the State of Maryland, for the body of the City of Baltimore, do on their oath present that William Adams and Walter Rouse alias John Roush did on the 20th day of August 1949 and thence continually until the 15th day of August 1951, unlawfully conspire together and with certain other persons unknown to the Jurors aforesaid to violate the Lottery Laws of the State of Maryland in said City of Baltimore, and State of Maryland.*

IN THE CRIMINAL COURT OF BALTIMORE

INDICTMENT—Filed August 24, 1951

STATE OF MARYLAND,
City of Baltimore, to wit:

The Jurors of the State of Maryland, for the body of the City of Baltimore do on their oath present that William Adams and Walter Rouse otherwise called John Roush late of said City, on the first day of August, in the year of our Lord nineteen hundred and forty-seven, at the City aforesaid and thence continually until the fifteenth day of August, in the year of our Lord nineteen hundred and fifty-one, at the City aforesaid, unlawfully conspired together, and with certain other persons to the Jurors aforesaid unknown, unlawfully to violate the lottery laws of the State of Maryland, contrary to the form of the Act of Assembly in such case made and provided and against the peace government and dignity of the State.

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* Then follows list of 23 witnesses. Maurice Jones, 710 Peach Orchid Lane, Turner Station, included therein.

[fol. 8] Second Count

And the Jurors aforesaid, upon their oath aforesaid, do further present that the said William Adams and Walter Rouse otherwise called John Roush on the first day of August, in the year of our Lord nineteen hundred and forty-seven, and thence continually until the fifteenth day of August, in the year of our Lord nineteen hundred and fifty-one, at the City aforesaid, unlawfully conspired together, and with certain other persons to the Jurors aforesaid unknown unlawfully to sell lottery tickets to a certain person to the Jurors aforesaid unknown contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

Third Count

And the Jurors aforesaid, upon their oath aforesaid do further present that the said William Adams and Walter Rouse otherwise called John Roush on the first day of August, in the year of our Lord nineteen hundred and forty-seven, and thence continually until the fifteenth day of August, in the year of our Lord nineteen hundred and fifty-one, at the City aforesaid, unlawfully conspired together, and with certain other persons to the Jurors aforesaid unknown unlawfully to keep a certain place to wit: a room for the purpose of selling lottery tickets contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

Fourth Count

And the Jurors aforesaid, upon their oath aforesaid do further present that the said William Adams and Walter Rouse otherwise called John Roush on the first day of August, in the year of our Lord nineteen hundred and forty-seven and thence continually until the fifteenth day of August, in the year of our Lord nineteen hundred and fifty-one, at the City aforesaid unlawfully conspired to-[fol. 9] gether, and with certain other persons to the Jurors aforesaid, unknown, unlawfully and knowingly to permit certain rooms there situate, of which they were then and there the owners, then and there to be used as a place for

selling lottery tickets, contrary to the form of the Act of Assembly in such case made and provided and against the peace, government and dignity of the State.

Fifth Count

The Jurors of the State of Maryland, for the body of the City of Baltimore do on their oath present that William Adams and Walter Rouse otherwise called John Roush late of said City, on the first day of August in the year of our Lord nineteen hundred and forty-seven and thence continually until the fifteenth day of August in the year of our Lord nineteen hundred and fifty-one, at the City aforesaid, unlawfully conspired together, and with certain other persons to the Jurors aforesaid unknown, unlawfully to have in their possession divers books, lists, slips and records of numbers drawn in a lottery; divers books, lists, slips and records of lottery tickets, divers books, lists, slips and records of money which had been received, and which was to have been received from the sale of lottery tickets, and things in the nature thereof; and divers things by which it was promised and guaranteed that particular numbers, characters, tickets and certificates would in a certain event, and upon the happening of a certain contingency in the nature of a lottery, entitle the purchaser or holder to receive money, property and evidence of debt; they the said William Adams and Walter Rouse otherwise called John Roush, at the time they so there had in their possession in the said books, lists, slips and records of lottery tickets; books, lists, slips and records of money which had been received, and which was to have been received from the sale of the lottery tickets, and things in the nature thereof, and things by which it was promised and guaranteed that particular numbers, characters, tickets and certificates would, in a certain event, and upon the happening of a certain con- [fol. 10] tingency, in the nature of a lottery, entitle the purchaser or holder to receive money, property and evidence of debt, not having the same in their possession for the purpose of procuring and furnishing evidence of the violation of any of the provisions of the law relating to lotteries; contrary to form of the Act of Assembly in such case made

and provided and against the peace government and dignity of the State.

Sixth Count

And the Jurors aforesaid, upon their oath aforesaid, do further present that the said William Adams and Walter Rouse otherwise called John Roush on the first day of August, in the year, of Our Lord nineteen hundred and forty-seven, and thence continually until the fifteenth day of August, in the year of our Lord nineteen hundred and fifty-one, at the City aforesaid, unlawfully conspired together and with certain other persons to the Jurors aforesaid unknown, unlawfully to have in their possession a book of lottery tickets, they the said William Adams and Walter Rouse otherwise called John Roush; at the time they so had the said book of lottery tickets in their possession, not having the same then and there in their possession for the purpose of procuring and furnishing evidence in the violation of any of the provisions of law relating to lotteries; contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

Anselm Sodaro, The State's Attorney for the City of Baltimore.

Upon the back of the aforegoing Indictment, was Endorsed as follows:

(True Bill)

(Signed) Harry M. Smyrk, Foreman.

Filed August 24, 1951.

[fol. 11] In the Criminal Court of Baltimore

Motion to Dismiss—Filed December 12, 1951

Now comes William Adams, one of the Defendants in the above entitled case by Joseph H. A. Rogan and J. Francis Ford, his Attorneys and moves this Honorable Court to dismiss the indictments numbers 3392 and 3393 and each and

every count hereof returned against him by the Grand Jury of Baltimore City for the following reasons:

I. The indictments do not state facts sufficient to constitute an offense against the State of Maryland and are defective for the following reasons:

A. The indictments do not state sufficient facts in connection with the commission of the offense as will put the accused on full notice of what he is called upon to defend.

B. The Indictments do not state sufficient facts to enable the accused to prepare his defense.

C. The Indictments do not establish such a record as will effectually bar a subsequent prosecution for the identical offense.

D. And for other reasons to be shown at the hearing hereof.

II. The indictments do not charge an offense under the Laws of Maryland for the following reasons:

A. The indictment in its several counts charges:

1. Conspiracy to violate the lottery laws of the State of Maryland.

2. Conspiracy to sell lottery tickets.

3. Conspiracy to keep a room for the sale of lottery tickets.

4. Conspiracy to permit certain rooms owned by the defendants to be used as a place for the sale of lottery tickets.

5. Conspiracy to have in possession divers books, etc., drawn in a lottery; divers books, etc. and records of money [fol. 12] derived from the sale of lottery tickets; divers things by which it was promised and guaranteed that particular numbers, characters, tickets, and certificates would, in a certain event, and upon the happening of a certain contingency in the nature of a lottery, entitle the purchaser or holders to receive money, etc.

6. Conspiracy to possess a lottery book.

B. That the crime of lottery requires for its commission the concurrent action and cooperation of more than one person.

C. That where plurality of agents is logically necessary to the commission of a crime, conspiracy to commit the crime cannot be maintained.

D. That where the concurrent action of two persons is necessary to perpetrate a certain crime, conspiracy to commit the crime is not a distinct offense.

E. That an agreement to commit an offense which can be committed only by the concerted action of the persons to the agreement does not amount to conspiracy.

F. That where a combination between two persons to effect a particular end shall be called, if the end be effected, by a certain name, it is not lawful to call it by some other name to wit: conspiracy.

III. That conspiracy to violate the law is a misdemeanor; that criminal prosecution for misdemeanors in Maryland must be brought within one year from the date of the offense; that the evidence in this case will not disclose any overt act as having been committed in furtherance of any alleged conspiracy within the statutory period of limitations barring such prosecutions.

IV. That the Defendant, William Adams, was tried and acquitted on a charge for violation of the lottery law in a series of indictments numbered 5545, 5546, 5547, 5548, 5549, 5550 on March 20, 1950, and that the co-defendant in this case, Walter Rouse, otherwise called John Roush, was con- [fol. 13] victed under the same series of indictments above referred to; that the Defendant, William Adams should not be tried twice for the same offense; that where the same evidence proves both the combination and the crime, which is the object of the conspiracy, only one offense is committed.

And the Defendant, William Adams, further moves this Honorable Court for appropriate relief to prohibit and exclude from evidence intended to be used by the State, at the trial of this case, the following items:

I. Any testimony or exhibits which the State proposes to produce including search warrants, betting paraphernalia, or any testimony from police officers or any other source concerning the raid conducted by Captain Emerson or any other members of the Police Department of Baltimore City

in connection with the raid on the premises located at 2006 W. North Avenue, on November 19, 1949, for the reason that prior hereto, to wit, on November 19, the Defendant, William Adams was arrested in connection with the above mentioned raid conducted by the Vice Squad of Baltimore City outside the premises known as 2006 W. North Avenue, as a result of which the said William Adams and Walter Rouse, otherwise called John Roush, and other Defendants were indicted and charged with violations of the lottery law of the State of Maryland, in a series of indictments numbered 5545, 5546, 5547, 5548, 5549, and 5550, heretofore referred to, and returned by the Grand Jury of Baltimore City; that the said cases subsequently came on for trial, to wit, on March 20, 1950, before the Honorable Michael J. Manley, one of the Judges of the Supreme Bench of Baltimore City, then presiding in the Criminal Court of Baltimore City, at which time the said William Adams was tried on the general issue plea; that the presiding Judge in finding the Defendant not Guilty, also decided that the search warrant admitted into evidence in the case was entirely too broad; that it did not come within the scope of Article 26 of the Maryland Declaration of Rights and accordingly, struck out all the evidence offered by the State, [fol. 14] which comprised the testimony of Captain Alexander L. Emerson, Officers Willie Runyou, Hubert C. Hogan, as will more fully appear in the Transcript of Record No. 27 October Term of the Court of Appeals of Maryland, 1950, in the case of the State of Maryland v. William Adams a certified copy of which record is hereto attached as an exhibit. The trial court at the conclusion of said testimony in said case, held that the arrest of Defendant William Adams and search and seizure of articles then in his possession were illegal, and found a verdict of not guilty; that subsequently the State of Maryland prosecuted an appeal to the Court of Appeals of Maryland and upon motions properly made by the Defendant, the appeal was dismissed; that the finding of the lower Court, and that of the Court of Appeals of Maryland is the law of the case, and the State of Maryland is estopped in the present case from the use, proffer and introduction of such legally inadmissible evidence which was adjudicated by - this Honorable Court as such, under date of March 20, 1950, upon the trial of the case on the general

issue plea and a verdict and judgment of not guilty, as the same cannot again be used by the State in this case or in any other proceeding, and should not, therefore, again be relitigated.

II: The transcript of testimony of the Defendant, William Adams taken before the Sub-Committee of the Senate of the United States pursuant to Senate Resolution 202 of the 81st Congress, Second Session, the said testimony having been taken under date of July 2, 1951, or the statements of any witnesses who may have been present and heard such testimony at the said hearing before the said Sub-Committee, or information obtained from a seizure of his private books and records compelled to be produced by process for the reason that the said William Adams appeared involuntarily before the said Committee in compliance with the subject to a subpoena and subpoena duces tecum issued by the Chairman of the Committee on Organized Crime, the Committee being authorized by Senate Resolution 202, to require by subpoena or otherwise the attendance of witnesses and the production of such books papers and documents, to administer oaths, and to take [fol. 15] testimony; that the said William Adams having been served with the subpœna was compelled therefore to attend and made to testify as well as produce his private books and records, under threat of possible imprisonment for failure to testify; as is provided by Section 192, Title 2 of the United States Code Annotated, which provided as follows:

> "Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint of concurrent resolution of the Two Houses of Congress, or any committee of either House of Congress, wilfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor punishable by a fine of not more than $1000.00 nor less than $100.00 and imprisonment in a common jail for not less than one month nor fore than twelve months." (Amended, 1938.)

That being so compelled to testify and made to produce his private books and records, the Defendant in this case avers that in so testifying and producing his books and records provides for him immunity from self-incrimination under Title 18, Section 3486 of the United States Code Annotated, which provides as follows:

> "No testimony given by a witness before either House or before any committee of either House, or before any joint committee established by a joint or concurrent resolution of the two Houses of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committed in giving such testimony. But an official paper or record produced by him is not within the said privilege. June 25, 1948, 62 Stat. 833."

That to permit and allow the State of Maryland in a criminal case pending against William Adams to use this testi- [fol. 16] mony, statements or circumstances, aforesaid, to be used as evidence in the instant criminal case, would be tantamount to requiring and compelling the Defendant to give evidence against himself in violation of Article 22 of the Declaration of Rights of the Constitution of Maryland, and in violation of his rights under the 5th Amendment of the Constitution of the United States, by compelling this Defendant in this Criminal case to be a witness against himself.

And for other reasons to be shown at the time of the hearing.

(Signed) Joseph H. A. Rogan, (Signed) J. Francis Ford.

IN THE CRIMINAL COURT OF BALTIMORE

ANSWER TO MOTION TO DISMISS—Filed December 17, 1951

The State of Maryland, by Anselm Sodaro, State's Attorney, in answer to Motion to Dismiss filed herein by the defendant, William Adams, says:

In answer to Paragraph I the State says that the indictment is in the form provided for by Art. 27 sec. 43A of the Maryland Code 1947 Supplement, which reads as follows:

> "In any indictment or warrant for the crime of conspiracy, it shall be sufficient to use a formula substantially to the following effect: That A-B and C-D on the — day of ———, 19—, at the County (City) aforesaid unlawfully conspired together to murder X-Y (or other conspiracy here stating briefly the object of the conspiracy), against the peace, government and dignity of the State."

In answer to Paragraph II the State says that the crime of conspiracy to violate the lottery laws is recognized and provided for by Art. 27 of the Code of Maryland Laws:

> [fol. 17] "Sec. 43. No person shall refuse to testify concerning the crime of conspiring to commit any of the offenses set forth in Section 27 of this Article, subtitle "Bribery", or set forth under the Sub-title "Gaming" of this Article or set forth under the Sub-title "Lotteries" of this Article, and any person shall be a competent witness and compellable to testify against any person or persons who may have conspired to commit any of the aforesaid offenses of which such person so testifying may have been guilty or a conspirator therein and about which he was so compelled to testify."

Therefore, the position of the defendant as set forth in Paragraph I (2) falls. Furthermore, the crime of Conspiracy to violate the lottery laws is separate and distinct from the crime of lottery, see Gilpin v. State, 142 Md. 464.

In answer to Paragraph III, that conspiracy is a misdemeanor barred within one year by the Statute of Limitations, the State says: (1) that Art. 27 Sec. 42 provides for a period of limitations of two years, and (2) the charge in

this case is a continuing conspiracy and is, therefore, not covered by the aforesaid two year limitation, provided the proof shows that the conspiracy continued into the said period of two years from the finding of the presentment by the Grand Jury, i.e. within two years from August 15, 1951, see Hitzelberger v. State, 174 Md. 152, at 162 3.

In answer to Paragraph IV the State says: that William Adams was acquitted of the substantive offense of lottery under Indictments Nos. 5545-6-7-8-9-50 committed on November 14, 15, 16, 17, 18 and 19, 1949 and that Walter Rouse was convicted and sentenced under said indictments but the charge in this case is conspiracy to violate the lottery laws on August 1, 1947 and thence continually until and including the 15th day of August 1951.

Further answering the "Move to Prohibit and Exclude Certain Evidence" the State says that this move is premature. It cannot be made until the offer is made at the [fol. 18] time of the trial to introduce this evidence. However, the allegations of Section I has been fully covered in this answer.

In answer to Section 2 the State says that the immunity granted to witnesses who testify before a Congressional Committee extends only to criminal proceedings in the Federal Courts.

Furthermore, the defendant Adams was compelled to appear before the Congressional Committee but he could not be compelled to incriminate himself; if he did so, that was his own election. See Bessie Pick v. State, 143 Md. 192.

The State of Maryland in this case has not made any attempt to require the defendant, William Adams, to produce his personal books and records and does not intend to do so. Therefore, the rule laid down in the case of Blum v. State, 94 Md. 375 does not apply.

(Signed) Anselm Sodaro, State's Attorney for Baltimore City.

IN THE CRIMINAL COURT OF BALTIMORE

NOTE RE NOLLE PROSEQUI

Mr. CLERK:

The State of Maryland, by Anselm Sodaro, State's Attorney, will enter a Nolle Prosequi to Counts 2, 3, 4, 5 and 6 of Indictment No. 3392, docket 1951 for the reason that Count 1 of said indictment fully covers the charge upon which the defendants will be brought to trial.

(Signed) Anselm Sodaro, State's Attorney for Baltimore City.

[fol. 19] IN THE CRIMINAL COURT OF BALTIMORE

MOTION FOR DISCOVERY—Filed March 20, 1952

To the Honorable, the Judge of Said Court:

And now comes William Adams, one of the Defendants in the above entitled cause, by Joseph H. A. Rogan, and J. Francis Ford, his attorneys and moves the Court in accordance with Rule No. 5 of the Criminal Rules of Practice and Procedure, to require the State's Attorney of Baltimore City to discover unto this Defendant the following information, matters and facts material to his defense.

(1) Describe in detail or produce for copying and inspection any books, records, transcripts of testimony, exhibits, articles of any kind now in the possession of the State's Attorney's Office of Baltimore City, the Police Department, or any other prosecuting officials, intended to be used as evidence in the trial of the case of the State of Maryland v. William Adams under Indictment No. 3392 and No. 3393.

(2) State the names and addresses of all witnesses whom the State of Maryland will produce at the trial to testify against the Defendant, William Adams.

(Signed) Joseph H. A. Rogan, J. Francis Ford.

IN THE CRIMINAL COURT OF BALTIMORE

ANSWER TO MOTION FOR DISCOVERY—Filed May 5, 1952

To the Honorable, the Judge of Said Court:

The State of Maryland by Anselm Sodaro, State's Attorney in answer to the Motion for Discovery filed by William Adams, on March 20th, 1952 says:

(1) The books, records, etc., demanded by said Defendant in Paragraph I, of the Motion for Discovery is identical with the Motion for Discovery filed by said Defendant on [fol. 20] September 6th, 1951. The State answered this demand on September 21st, 1951, as follows:

"This Paragraph would require the State's Attorney to turn over his entire file to Defendant—this demand is far beyond the requirements of Rule 5 in that the defense has demanded material other than written statements made by Defendant, or material obtained by seizure or by process."

The Defendant excepted to the State's answer on October 2, 1951 as follows:

"The information requested in Paragraph 8, of the Motion for Discovery to which the State has declined to furnish an answer is information which is material to the defense of the said William Adams, and is a reasonable request within the meaning of Rule 5 of the New Criminal Rules of Practice and Procedure; that the said information requested should be furnished to the said William Adams with particular reference to any documents or exhibits now in the possession of the State and which the State proposes to use and introduce as evidence in the trial of the said case, and more particularly, any written statements or transcripts of testimony obtained from others by seizure or by process, as upon the hearing of said exceptions, there will be a showing that the items sought may be material to the preparation of his defense and the request is reasonable."

The above exception to the State's answer to Defendant's Motion for Discovery was overruled by Judge Joseph Sherbow on October 29th, 1951, and the Defendant Adams appealed therefrom to the Court of Appeals of Maryland.

The Court of Appeals, dismissed this appeal as being premature.

The State says that the Defendant's counsel have in their possession a copy of all the testimony taken at the former trial of this case before Judge Sherbow on December 20th and 21st, 1951. The State intends upon the retrial of this case to offer all of said testimony except those parts which [fol. 21] the Supreme Bench held to be inadmissible upon the Motion for New Trial.

Furthermore, the State does not have in its possession any papers taken from the Defendant William Adams, nor papers taken from other persons. The State does have in its possession a transcript of William Adams' testimony before the Special Committee to Investigate Organized Crime in Interstate Commerce, U. S. Senate, on Monday, July 2nd, 1951. A copy of this testimony of William Adams at said time and place is in possession of the said defense counsel. Relevant excerpts of this testimony were testified to in the previous trial of this case by Alfred F. Goldstein, Record Page 164, etc., and the State intends to offer the same and possibly additional testimony from said transcript, upon the retrial of this case.

(2) The State in answer to the Demand for names and addresses of witnesses says:

That at present it intends to summons the hereinafter named witnesses, however, the State reserves the right to call any additional witnesses which it may hereafter find to be necessary in order to prove its case. If the need for such witnesses before the time of the trial becomes apparent, the State will promptly furnish defense counsel the names and addresses of such witnesses.

IN THE CRIMINAL COURT OF BALTIMORE

MOTION TO DISMISS—Filed May 9, 1952

Now comes William Adams, one of the Defendants in the above entitled case, by Joseph H. A. Rogan and J. Francis Ford his attorneys and moves this Honorable Court to grant appropriate relief by prohibiting and ex-

cluding from evidence, under Rule 3 of the New Criminal Rules of Practice and Procedure, the following items:

All of the testimony of William Adams, which the State intends to offer as stated in its Answer heretofore filed to the Defendant's Motion for Discovery, contained in a tran- [fol. 22] script of said testimony in the possession of the State which was taken before the Special Committee to Investigate Organized Crime in Interstate Commerce, U. S. Senate on Monday, July 2, 1951, or the Statements or testimony of any witnesses who may have been present and heard such testimony at the said hearing, or information obtained from a seizure of the Defendant's private books and records, compelled to be produced by process, for the reason that the said William Adams did not voluntarily appear as a witness before the Committee and that the testimony that he gave was under compulsion, and he was also compelled to produce his books and records. That the said William Adams appeared involuntarily before the Sub-Committee of the United States Senate on July 2, 1951, pursuant to Senate Resolution 202 of the 81st Congress, Second Session, in compliance with and subject to a subpoena and subpoena duces tecum, personally served on said William Adams, and issued by the Chairman of the Committee on Organized Crime, the said subpoenas being hereto attached, the said Committee being authorized by Senate Resolution 202 to require by subpoena or otherwise the attendance of witnesses and the production of such books, papers and documents, to administer oaths, and to take testimony; that the said William Adams having been served with the subpoena was compelled therefore to attend and made to testify as well as produce his private books and records, under threat of possible imprisonment for failure to testify; as is provided by Section 192, Title 2 of the United States Code Annotated, which provided as follows:

> "Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the Two Houses of Congress, or any committee of either House of Congress, wilfully makes de-

> fault, or who, having appeared, refused to answer any question pertinent to the question under inquiry, shall [fol. 23] be deemed guilty of a misdemeanor punishable by a fine of not more than $1000 or less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months." (Amended, 1938.)

That being so compelled to testify and produce his private books and records, the Defendant in this case avers that such testimony and books and records, provided immunity from self-incrimination under Title 18, Section 3486 of the United States Code Annotated, which provided as follows:

> "No testimony given by a witness before either House or before any committee of either House or before any joint committee established by a joint or concurrent resolution of the two Houses of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in prosecution for perjury committed in giving such testimony. But an official paper or record produced by him is not within the said privilege. June 25, 1948, c. 745, 62 Stat. 833."

That to permit and allow the State of Maryland in a criminal case pending against William Adams to use this testimony, statements or information secured from his records, obtained under the circumstances, aforesaid, to be used as evidence in the instant criminal case, would be tantamount to requiring and compelling the Defendant to give evidence against himself in violation of Article 22 of the Declaration of Rights of the Constitution of Maryland, and in violation of his rights under the 5th Amendment of the Constitution of the United States, by compelling this Defendant in this criminal case to be a witness against himself.

And for other reasons to be shown at the time of the hearing.

(Signed) Joseph H. A. Rogan, J. Francis Ford, Attorneys for Defendant, William Adams.

[fol. 24] SUBPOENA DUCES TECUM

UNITED STATES OF AMERICA, CONGRESS OF THE UNITED STATES

To William L. Adams, 1926 Pennsylvania Avenue, Baltimore, Maryland:

Greeting:

Pursuant to lawful authority you are hereby commanded to appear before the special Committee on Organized Crime in Interstate Commerce of the Senate of the United States, on June 21st, 1951, at 10:00 o'clock a.m., at their committee room 900 Federal Housing Loan Bank Bldg., Washington, D. C., then and there to testify what you may know relative to the subject matters under consideration by said Committee, and bring with you:

1. All ledgers, vouchers, cancelled checks, check stubs, bank deposit slips, bank statements, financial statements, notes, copies of tax returns, records of accounts receivable and payable and records of cash receipts and disbursements, for the period from January 1, 1940 to date;

2. All books, records or other documents showing ownership of, or other holding or interest in any business, company, or enterprise, or in any property, real, personal or intangible, for the period from January 1, 1940 to date;

3. All correspondence relating to the subject matter referred to in paragraph 2 hereof, for the period from January, 1, 1940 to date.

Hereof fail not, as you will answer your default under the pains and penalties in such cases made and provided.

To E. H. Farrell, Jr., to serve and return.

[fol. 25] Given under my hand, by order of the Committee, this 15th day of June, in the year of our Lord One thousand nine hundred and fifty-one.

Chairman, Committee on Organized Crime in Interstate Commerce.

SUBPOENA

UNITED STATES OF AMERICA, CONGRESS OF THE UNITED STATES

To William L. Adams, 1926 Pennsylvania Avenue, Baltimore, Maryland.

GREETINGS:

Pursuant to lawful authority, You Are Hereby Commanded to appear before the Special Committee on Organized Crime in Interstate Commerce of the Senate of the United States, on June 27th, 1951, at 10:00 o'clock a. m., at their committee room 457 Senate Office Building, Washington, D. C., then and there to testify what you may know relative to the subject matters under consideration by said Committee.

Hereof Fail Not, as you will answer your default under the pains and penalties in such cases made and provided.

To E. H. Farrell, Jr., to serve and return.

Given under my hand, by order of the Committee, this 15th day of June, in the year of our Lord one thousand nine hundred and Fifty-one.

Chairman, Committee on Organized Crime in Interstate Commerce.

[fol. 26] IN THE CRIMINAL COURT OF BALTIMORE

ANSWER TO MOTION TO DISMISS—Filed May 13, 1952

The State of Maryland by Anselm Sodaro, State's Attorney for the City of Baltimore, in answer to the Motion to Dismiss filed by William Adams on May 9, 1952, says:

The defendant, William Adams, was compelled to appear before the Senate Investigating Committee, but was not compelled to incriminate himself. Many witnesses who received similar summonses before the Senate Committee refused to testify on the ground that such testimony would

incriminate themselves and William Adams had the same opportunity had he so elected.

The contention that the State intends to use such part of his evidence procured through the summons of the Senate Committee requiring William Adams to produce his private books and records is without foundation. The State, at the previous trial, did not produce any such evidence and does not propose to do so at the coming trial.

The United States Government is entirely without power to grant by Congressional action immunity in a State Court. The immunity granted witnesses under Title 2, U. S. C. Sec. 192 applies only to immunity for such witness in a court of the United States.

Having fully answered the contentions of the defense, the State asks that the Motion to Dismiss be denied.

(Signed) Anselm Sodaro, State's Attorney for Baltimore City.

IN THE CRIMINAL COURT OF BALTIMORE

MOTION OF WALTER ROUSE FOR SEVERANCE AND GRANTING THEREOF—Filed May 20, 1952

Now comes the Traverser, Walter Rouse, by R. Palmer Ingram and Ernest L. Perkins, his attorneys, and requests a Severance in the indictment against him, to the end, that he, Walter Rouse, may be tried separately and apart and [fol. 27] not jointly with the said William L. Adams, and for cause therefore says that:

1. The interests of the said Walter Rouse are apart and distinct from the interests of William L. Adams.

2. That Counsel for the said Walter Rouse is not the same Counsel of William L. Adams.

3. That the State has in its possession certain statements made by the said William L. Adams which if offered and admitted in a joint trial of the two Traversers, will be distinctly harmful and in violation of the rights guaranteed to him by the Constitution of the United States.

4. And for such other reasons as may be proffered at the hearing upon the within Motion.

And, as in duty bound, etc.

(Signed) R. Palmer Ingram, Ernest L. Perkins, Attorneys for Walter Rouse.

Upon the back thereof, was Endorsed, as follows: May 21, 1952—Motion for Severance Granted.

(Signed) E. Paul Mason, Judge.

IN THE CRIMINAL COURT OF BALTIMORE

MOTION TO DISMISS—Filed May 23, 1952

Now comes William Adams, one of the Defendants in the above entitled case by Joseph H. A. Rogan and J. Francis Ford, his attorneys, and moves this Honorable Court to dismiss the indictments returned against him by the Grand Jury of Baltimore City, indictments numbered No. 3392 and No. 3393, for the following reasons:

[fol. 28] I. The indictment does not charge an offense under the laws of the State of Maryland for the following reasons:

(1) That the crime of lottery requires for its commission the concurrent action and cooperation of more than one person.

(2) That where plurality of agents is logically necessary to the commission of a crime, conspiracy to commit the crime cannot be maintained.

(3) That where the concurrent action of two persons is necessary to perpetuate a certain crime, conspiracy to commit the crime is not a distinct offense.

(4) That an agreement to commit an offense which can be committed only by the concerted action of the persons to the agreement does not amount to conspiracy.

(5) That where a combination between two persons to effect a particular end shall be called, if the end be effected, by a certain name, it is not lawful to call it by some other name.

II. That conspiracy to violate the law is a misdemeanor; that criminal prosecution for misdemeanors in Maryland

must be brought within one year from the date of the offense; that the indictment alleges that the conspiracy continued from August 1, 1947, to August 15, 1951.

III. That the Defendant was tried and acquitted of a charge of violating the lottery laws in a series of indictments numbered 5545, 5546, 5547, 5548, 5549 and 5550, on March 20, 1950, and that he should not be tried twice for the same offense.

And for other reasons to be shown at the time of the hearing.

(Signed) Joseph H. A. Rogan, J. Francis Ford, Attorneys for Defendant William Adams.

[fol. 29] Endorsed Thereon, as follows: "5/26/52—Motion to Dismiss Denied.

(Signed) E. P. M.", Judge.

IN THE CRIMINAL COURT OF BALTIMORE

ANSWER TO MOTION TO DISMISS

The State of Maryland, by Anselm Sodaro, the State's Attorney for the City of Baltimore, in answer to the Motion to Dismiss filed by William Adams on May 23, 1952, says:

The Subject matter of this Motion to Dismiss was overruled by Judge Sherbow on December 19, 1951 after Answer filed by the State and after full hearing. Furthermore, the Supreme Bench, on the Motion for New Trial filed by William Adams, found, in effect, that Judge Sherbow's aforesaid ruling was correct and proper.

Having fully answered the Motion to Dismiss the State asks that it be denied.

(Signed) Anselm Sodaro, State's Attorney for Baltimore City.

IN THE CRIMINAL COURT OF BALTIMORE

Baltimore, Maryland,
May 26, 1952.

Before Honorable E. Paul Mason, Judge, Without a Jury

TRANSCRIPT OF TESTIMONY AT TRIAL

APPEARANCES

William H. Maynard, Esq., Deputy State's Attorney, and William C. Rogers, Jr., Esq., Assistant State's Attorney on behalf of the State.
[fol. 30] Joseph H. A. Rogan, Esq., and J. Francis Ford, Esq., Attorneys on behalf of the defendant.

* * * * * * *

COLLOQUY

The Clerk: The motion to dismiss was filed Friday.

Mr. Maynard: I filed an answer Friday.

The Court: Gentlemen, I will hear you on this Motion, and I might say this. Of course these very same questions had been before the Court not only once but many times, and in every one of these conspiracy cases——

Mr. Ford: We don't want to make any extended argument in the case. We know the Court has passed on it, and of course the Court of Appeals has not, and we want this in the record.

The Court: Is there anything specially applying to this case that I should hear you on outside of the general rulings with respect to the questions that you raise? Is there any question of fact you want to bring to my attention, or something that is special in this particular case that would be different from any conspiracy case?

Mr. Rogan: The only question we have in mind is with respect to the State's attempt to introduce the Washington testimony.

The Court: Well I have already passed on that.

Mr. Rogan: But we want to rebut it at the proper time by producing evidence concerning the setting and the circumstances under which the testimony was given, and for

that limited purpose only we might call the defendant himself, but only for that purpose.

The Court: If you put him on the stand you are going to put his credibility in question.

Mr. Rogan: We didn't feel that way. It was just for rebuttal and for a limited purpose only.

[fol. 31] The Court: I have never done that, Mr. Rogan. I have had many of these cases where the witness was offered for a special purpose, but the difficulty is the minute you put him on the stand to testify for any purpose then the question of his credibility is in issue.

Mr. Rogan: As a matter of practice you could see at that time if this case was being tried before a jury you would exclude the jury and the question raised by the factual situation limited to that particular matter would only be inquired into.

The Court: But his credibility with respect to that state of the matter would still be in issue, and unfortunately you can't divide the zones of credibility. The minute it gets into a question of credibility then the man's credibility all the way through is in issue. I know some Judges do it. I don't do it. Some other Judges don't. I have never done it. I have never limited it. The minute you put him on for any purpose—I only tell you that so you won't be surprised. You can make your offer at that time, and I will rule on it in accordance with what I have just told you.

Now is there any particular thing about this motion you want to call my attention to?

Mr. Ford: No, if you Honor please.

The Court: Well I will overrule it.

Now do you want to make a short opening statement?

Mr. Rogan: There is just this, your Honor. By reason of the re-arraignment of the defendant in this case I assume that all prior preliminary pleadings will be covered in the trial of this case, that is our first motion to dismiss?

The Court: Well I think I wrote you and told you I overruled that.

Mr. Rogan: I know, but we are re-offering it by reason of the re-arraignment of the defendant in the case.

[fol. 32] The Court: Same ruling. Now, do you want to make a preliminary opening statement?

Mr. Rogers: Yes, your Honor.

(Mr. Rogers then made an opening statement to the Court.)

(Mr. Rogan reserved opening statement on behalf of the defendant.)

RUBEN MAURICE JONES, a witness of lawful age, produced on behalf of the State, after being duly sworn in accordance with law, was examined and testified as follows:

Direct examination.

By the Bailiff:

Q. State your name.
A. Ruben Maurice Jones.
Q. Address?
A. 710 Peach Orchard Lane, Baltimore 22.

By Mr. Rogers:

Q. Now Mr. Jones, have you or have you not ever been in the lottery business?
A. Yes.
Q. About when was that that you were actually in the lottery business, sir?
A. From Monday, November 3rd, 1947 until March 20th, 1948.
Q. Will you explain to his Honor how you happened to get into the business, sir?
A. It so happened I got a telephone call advising me to get in touch with Milton Foster and from there on I would get twenty-five percent of the winnings, that he and I were supposed to operate this outfit.
Q. Do you know who called you?
A. The person said Willie Adams, said Mr. Adams.
[fol. 33] Q. Did you take up that offer, did you contact Milton Foster?
A. Yes, I did.
Q. Who was there when you contacted him?
A. Milton and I went through the arrangements. I knew nothing about the procedure prior to that, so Milton and I

sat down and went over it, how it should be done, and so forth.

Q. About what date was that, sir?

A. That was on Sunday night, I think I got my call on the first, which was a Saturday, and the Sunday night I was at Milton Foster's house.

Q. Saturday, November 1st, 1947?

A. '47.

Q. Now you say you met Mr. Foster, and did you go into the actual lottery operation shortly after that?

A. The next day.

Q. The next day?

A. Which was Monday.

Q. Monday the 3rd?

A. That is right.

Q. Where was that, sir?

A. Three hundred block, I can't remember the number of North Calhoun.

Q. Three hundred block North Calhoun?

A. That is right.

Q. What was your actual job there? Did you write or what did you do?

A. No, I have never written a number in my life. It was complete management as far as the books, keeping a record of the fellows who were getting the number business out in the street, as well as showing them how much they owed on their collections or how much profit there might be.

Q. Were you watching this for your own interest?

A. Naturally.

Q. Was the business in operation when you got there or did you set it up yourself?

A. It was in operation.

Q. How many men were involved, do you know?

A. Approximately eight. There may have been nine in- [fol. 34] cluding myself, or may have been eight including myself. If I had to come down and just name them off or count them I think it would be approximately eight.

Q. You say they were there when you got there?

A. No, they weren't there when I got there. They came in. I think I was about the first one there, the first day of my operation, and they gradually came in. There was a

time element. You had to be in by a certain time, so eventually that first day they all showed up.

Q. Now did you invest any money in that setup?

A. No, I didn't.

Q. How much did you get out of it?

A. I didn't get anything out of it other than what I took for living expenses.

Q. About how much was that, sir?

A. I would say it was between—I think I charged myself with between twenty-five hundred and three thousand dollars. Sometime I would take out $75.00 a week. At times I took out as much as $150.00. All depends upon what my necessities demanded.

Q. Who did setup or put in the actual capital to carry this operation on?

A. That I could not say.

Q. You do not know?

A. No.

Q. Who did you deal with beside Milton Foster in keeping these accounts?

A. No one. I was the sole authority on that.

Q. You had complete control over all accounts?

A. Definitely.

Q. What would you do with the money that was taken in every day?

A. At first I would take it home. I had a young fellow ride with me. You know there are such instances where you can get yourself held up, but I was dealing with somebody else's money, and I didn't want to be wrapped up in that. [fol. 35] So I had a young man that rode with me constantly, and when that money would get a thousand dollars or more I would take it from my home and place it in a safe.

Q. Where was that safe located?

A. I believe that address is 1519 Pennsylvania Avenue.

Q. Is that your office?

A. No, not mine.

Q. Whose office was it, sir?

A. I will put it like this. The name on the window said Adams Realty Company.

Q. Who gave you permission or told you—let me re-

phrase that question. Why did you put the money in the safe at 1519 Pennsylvania Avenue?

A. Number one was I didn't want it laying around my house. Number two was I had to find some adequate place to keep it, and Milton and I talked it over and——

Mr. Rogan: We object to it.

The Court: Sustained.

Q. Don't tell us what you and Milton had to say.

A. I am trying to answer your question, that is the best way I can answer it.

Q. Well did you ever meet anyone there at 1519 Pennsylvania Avenue during the course of this operation?

A. When you say anyone, what do you mean?

Q. Who would open the safe for you, Mr. Jones?

A. I see what you mean. There was a young lady in that office by the name of Miss Arlington, and I told her I wanted to keep it in there.

Q. Would she open the safe for you?

A. Yes, I didn't know the combination.

Q. Did you ever see Willie Adams there in the office?

A. I saw Mr. Adams the day that I made up my mind to get out of it.

[fol. 36] Q. Let's not proceed to that point yet. What was the highest amount of cash that you ever kept in the safe at 1519 Pennsylvania Avenue?

A. The peak?

Q. Yes, the peak.

A. Twenty-nine thousand dollars.

Q. In cash?

A. Wouldn't get it any other way but cash.

Q. You say that you got out of it. About what date, sir?

A. The 20th of March, 1948.

Q. What made you decide to get out?

A. I didn't see any need of my taking a chance to go to jail, and the fellows wasn't collecting that money. One man was better than $7,000.00 short instead of $3,000.00 short. The money was out in the streets, and I knew what was in that safe, I knew what was charged to me, so I made up my mind, I told Foster I am going to quit, and that morning I walked in and quit.

Q. How did you go about quitting, just tell Mr. Foster "I quit"?

A. He really was supposed to have met me because I had everything ran up. I did it like this, if you will let me go back.

Mr. Rogan: We are going to object to what the arrangements were with Foster.

The Court: I don't understand this, this is what you did every day? You are telling about your movements, aren't you?

The Witness: That is right.

The Court: What you did up there in the business, isn't that right?

The Witness: That is right.

The Court: Well I don't see any objection to that.

Mr. Rogan: He started to mention Mr. Foster, said he had some arrangement with Mr. Foster to meet Mr. Foster. [fol. 37] The Court: Read that back there a minute.

(Testimony read by the reporter.)

The Court: What are you talking about you did? You did what?

The Witness: He asked me this question did I just quit.

Mr. Rogan: We object to what Foster asked him.

A. Foster didn't ask me anything.

Q. I think I can rephrase the question. Mr. Jones, we had reached the point where you said you decided to get out of the business. I asked you to whom did you turn over the books of account you said you were keeping?

A. That is what you are asking me now?

Q. That is what I am asking you now.

A. I walked into the office of Adams Realty. Foster wasn't there. I went into the private office after knocking on the door.

Q. Whose private office?

A. Just a minute. Mr. Adams was in that private office.

Q. You say Mr. Adams, Mr. Jones. Who do you mean by Mr. Adams, do you see that man in court today?

A. He is sitting to my immediate right.

Q. Well turn around and point him out please, if you see him.

A. Right there.

Q. Indicating the defendant Willie Adams. He is the man you say was in the private office?

A. He was in the private office.

Q. Did you or did you not have a conversation with him?

A. I wouldn't call it a conversation.

Q. Did you or did you not say anything?

A. Yes, I did.

Q. What did you say to him and what did he say to you?

A. I had six or more books——

[fol. 38] Mr. Rogan: I object unless it was in Adam's presence.

Q. He said it was Mr. Adams.

Mr. Ford: He said it was in Mr. Adams private office, he didn't say he was there.

A. He was sitting in the office, Mr. Adams.

Q. Now your Honor he is a State's witness, this is direct examination.

The Court: Let him testify, go ahead.

A. I was very much sour on the operation. So I said to Mr. Adams, I am through with this, there is not any future in it whatsoever, and I just pitched the books on the table and walked on out.

Q. Did you or did you not do or say anything about the $29,000.00 in cash, or did you have $29,000.00 at that time?

A. There was no $29,000.00 then. Possibly if it had been I would have still been in it.

Q. Did you do anything about the distribution of that money or didn't you?

A. No, I left it there.

Q. Just left that in the account books?

A. I had used about $3,000.00. It was up to the other fellows to get the rest. I didn't care personally.

Q. Did you know Willie Adams prior to that date?

A. Sure, I knew him.

Q. Had you had any conversations with him relative to

this lottery business prior to the date you turned in the books?

A. No, I never did see him to be frank about it. When I got through I would go home. If I am going to run a thing I just run it.

Q. But you turned in the books of account to Mr. Adams on what date, sir, March 20th, 1948 I believe?

A. I phrased it like this. I pitched those books on that desk and walked out.

[fol. 39] Q. Let's go to about September or October 1949, Mr. Jones.

The Court: Well let me, before you go too far from that. Whose office was this you saw Mr. Adams in?

A. There was an adjoining office, your Honor, in reference to the main office where people paid their rent to Adams Realty Company.

The Court: Was this the office you saw Mr. Adams in of the Adams Realty Company?

A. Yes, it was an adjoining office.

The Court: All right, go ahead.

Q. Mr. Jones, let's proceed then to approximately September or October of 1949. Did you or did you not see Willie Adams just prior to a big strike down at the Bethlehem Steel Company, sir?

A. Yes, sir.

Q. Where was that, Mr. Jones?

A. Ask that question again, please.

Q. I said did you or did you not see Willie Adams in either September or October of 1949, just prior to a strike at Bethlehem Steel?

A. Yes, I did.

Q. Where?

A. On the golf course.

Q. Which golf course?

A. Carroll Park.

Q. That is here in Baltimore City?

A. That is right.

Q. What if any conversation did you have with him at that time, Mr. Jones?

A. Well we discussed it, it was very brief. Four of us were on the second tee, and had driven our balls, and a twosome composed of Mr. Adams and another gentleman whose name I need not call, were finishing their first hole, and out of c-urtesy we allowed them to drive off and walked down the fairway together. The conversation came up, I think I was kidding him about how 500 and 501 hit just before Labor Day.

[fol. 40] Q. You say 500 and 501. What are they?

A. Those are numbers.

Q. Lottery numbers?

A. That is right.

Q. Who were you kidding?

A. I was kidding Mr. Adams about how those numbers hit on a Friday and Saturday. I happened not to be here, but I heard about it.

Q. Is that the same Adams you identified just a few minutes ago?

A. That is Mr. Adams.

Q. What other conversation if any took place at that time?

A. The essence of that conversation was, let me see, something like this, sir. The proposed new operation——

Q. What do you mean new operation, what type of operation?

A. Numbers, lottery.

Q. All right.

A. And how it could be carried on. My criticism was like this. I feel that the numbers you are paying too much, seven to one, that brings it down to a mathematical standpoint I felt—you will pardon me for using I, but I did—I felt it should have been six to one if he was going to operate. In that way you would have more plush or margin on which to sustain those big numbers when they hit like 500 or 501. But it was so short—well, you walk about two hundred twenty-five yards down the fairway, I couldn't drive any farther than that anyway, I do good to drive two hundred yards, so I had to stop and let the rest of them drive on, let this twosome drive on. They finished the second green, and I didn't see them anymore.

Q. Was there or was there not a discussion about you coming into a proposed new lottery setup?

A. Just very minutely because we didn't have too much time.

Q. Well what was it?

A. The conversation went that if it could be setup at six to one would I be interested. Naturally I haven't seen any man that isn't interested in making some money.

[fol. 41] The Court: Are you saying that Adams told you that or somebody else told you that?

A. No, the conversation in general, I am not saying he said that. I said it. I made that statement before.

Q. Who were you having the conversation with?

A. I was talking with Mr. Adams.

Q. Let's proceed then to about June of 1950. Did you or did you not participate in a series of meetings or several meetings in the Adams Realty Company at 1519 Pennsylvania Avenue?

A. Approximately two.

Q. Was there any conversation or wasn't there any at that time relative to a lottery setup?

A. There was. The conversation was an outgrowth of——

Q. Let's not go into what it grew out of, Mr. Jones, just stick strictly to the lottery business if there was any discussion along that line.

A. It was.

Q. What was that discussion ?

A. We will get right back to the same observation that I had made in '49 about six to one instead of this seven to one, and that was the only way anybody in Baltimore is going to really make money out of the numbers business, and naturally I was interested if it was six to one, but not any seven to one. We discussed it pro and con, but nothing resulted.

Q. Who is we?

A. Mr. Adams and I.

Q. Do you know anything about the setup? If you came into it what if anything were you to get out of it?

Mr. Rogan: Objected to.
The Court: Sustained.

Q. I will rephrase that, sir. Was there or was there not any discussion about how a lottery setup may be brought into being?

A. I could answer that question two ways.

Mr. Rogan: We object to it.

[fol. 42] Q. Was it or wasn't it?

The Court: Well I think it will have to be more specific. Sustained. Fix the time and date and ask him——

Q. I thought we had the time and date set.

Mr. Rogan: June, 1950.
The Court: Is that the date?

A. That was approximately the date, your Honor.

The Court: June, 1950?

A. That is right.
Q. Where did you say it was located, where the meeting took place?
A. It was in Mr. Adams' office at 1519 Pennsylvania Avenue.
Q. Will you tell us in detail, Mr. Jones, if you can what that conversation was?
A. I started to tell you prior, sir.
Q. Yes, leave out the——
A. The two-fold nature——

The Court: Just what he said and what you said.

A. I did most of the talking, tell you the truth, because I was materially interested in myself, and if it had materialized I would want to know to what extent I would share in any earnings.
Q. Were you told or weren't you?
A. I guess it was agreed——

Mr. Rogan: Objected to.

A. I suggested I would take——

The Court: I will take it subject to being followed up.

Q. What was said by you and what was said by anybody else?

A. I said I wouldn't come in under any circumstances unless I was able to get the same twenty-five percent of the profit.

[fol. 43] Q. Net or gross?

A. Net.

Q. Was there or was there not any discussion as to how much you should put into the lottery setup?

A. No. It was a known fact I didn't have any money.

Q. Who else was supposed to go in this business if anyone else?

A. The conversation came up as to, if there was a possibility of another person putting the money in, putting up this money, and it just never did materialize, tell you the truth.

Q. How much money was supposed to be put up, do you know?

A. Yes, I know.

Q. How much?

A. I said——

Mr. Rogan: Object to it.

The Court: Aren't you telling me what you suggested that you wanted to go in the business with Adams, and aren't you also telling me he never went into it with you?

A. That is right, your Honor.

The Court: All right, strike it all out. When I say strike it all out I refer to this conversation he says occurred in 1950 in which he did most of the talking.

Mr. Maynard: Can we further question him as to what Adams said in answer to any of these things?

The Court: Oh yes, I got the impression from him that Adams didn't say very much, he just listened to him.

Mr. Maynard: May I take over for a moment?

Mr. Ford: I object.

The Court: Wait a minute Mr. Rogers has the witness.

By Mr. Rogers:

Q. This deals then only with June 1950, the conversation in June 1950.

[fol. 44] The Court: If he has anything more that he says Adams committed himself to I am ready to listen to it, but I don't get that from his testimony. What I get from his testimony is that he was making certain proposal to Adams which Adams didn't agree to.

Mr. Rogan: That was his testimony before.

Mr. Rogers: It was not his testimony before, your Honor.

The Court: All right, go ahead.

Q. Mr. Jones, you mentioned that you suggested that if you went into the operation you would want twenty-five percent of the net profit, is that correct?

A. That is right.

Q. To whom did you make that suggestion?

A. On the first occasion?

Q. I am talking in June of 1950.

Mr. Rogan: Let him answer.

A. On the first occasion that was even suggested is when we had the third individual in there.

Q. Who was the third individual?

A. Do I have to involve that?

The Court: Yes.

A. Henry Parks.

Q. To whom did you make that offer or suggestion?

A. That I made as an overall demand. It wasn't a suggestion, that was just what I would do. It had to be that or nothing else.

Q. What if anything did Adams say in answer to that?

A. I remember he mentioned it like this. Well the first time you talked to me I said I wouldn't put up the money so we would have to get somebody else. That is when Parks appeared on the scene, that is at the second meeting. Parks hesitated, didn't say much——

[fol. 45] Mr. Rogan: We object. Was Parks there?

A. That was at the second meeting.

Mr. Rogan: Was Parks there?

A. At the second meeting.

The Court: That is what he is talking about.

A. The first mee-ing it was just Mr. Adams and myself. The second meeting—I told you there were two meetings. The second meeting was when Mr. Parks was there, and he never did guarantee the $10,000.00.

Q. Who didn't?

A. Parks.

Q. I believe I asked you before about what if anything you were supported to put into the operation, and what was your answer at that time?

Mr. Rogan: We object unless you specify what operation.

Q. The operation in June of 1950.

A. I answered that question, I wasn't putting in anything. I didn't have any money.

Q. Were you or were you not asked?

A. No.

Q. Was there or was there not any discussion as to what part you would play in the operation?

A. I would assume——

Q. Don't tell me what you assume. Was there or wasn't there any discussion?

A. Let me use another word instead of assume.

Q. Use the correct word but don't give us anything that you assume or guess. Tell us just what happened.

A. Sir, you don't know what the word assume meant. I said I was going to assume the sole responsibility. You thought when I used the word assume I was drawing on my imagination, but I didn't mean that.

Q. Tell us what took place?

A. How do you mean?

[fol. 46] Q. What if any conversation was there about what part you were supposed to take in this new operation?

A. I just answered that question.

Q. You were to assume what?

A. The entire responsibility of it.

Q. You were to be responsible to whom?

A. To myself.

Q. Just to yourself?
A. That is right.
Q. Who else was to be in the operation if you know?

Mr. Ford: He has already answered that question.
The Court: I don't think he has. Do you want to say anything else about that?

A. I will say your Honor, the thing did not become a reality. The functioning of it would have to be worked out if it had materialized, but it never did materialize.

The Court: All right, let's go to something else.
Mr. Rogers: Your witness.

Cross-examination.

By Mr. Rogan:

Q. Jones, in June of 1950 were you employed?
A. No, I was not.
Q. Prior to that time did you have a business?
A. I did.
Q. What happened to your business?

Mr. Rogers: I object to this question. It doesn't pertain to anything brought out in direct examination.
Mr. Ford: This is cross-examination, if your Honor please.
Mr. Maynard: We know that.
The Court: It is all right to cross-examine, but unless it is something the State examined him on you will have to [fol. 47] make him your witness. I don't recall we went into any business that he had except the lottery business when he had $29,000.00 in the safe.

Q. In June of 1950 were you on very good terms with Willie Adams?
A. I would say yes. I owed him $7,800.00, so you can determine how close I must have been.

The Court: That might indicate you were on bad terms with him.

A. No, I wasn't.
Q. Did you have a falling out with him?

A. In June? You mean in June of 1950?
Q. Yes.
A. No, I didn't have a falling out with him in June of 1950.
Q. When did you have a falling out with him?
A. It was the first part of January 1951.

Mr. Maynard: We object and ask it be stricken out.
The Court: Why?
Mr. Maynard: Because his whole testimony is June 1950, and they are bringing up something seven months later.
The Court: Oh well that is a general question, I will let him answer that.

Q. Did you appear before the Senate Crime Investigating Committee reporting certain facts against William Adams?

Mr. Rogers: Your Honor, I object again. This was not brought out in direct examination, sir.
The Court: What do you want to test on that, Mr. Rogan?
Mr. Rogan: I want to show a motive and the attitude and bias of the witness.
The Court: Well fix a date.

[fol. 48] Q. Did you appear before the Senate Crime Investigating Committee in Washington——

Mr. Rogers: The State objects again.
The Court: At what time?

Q. In January 1951.

Mr. Maynard: We object.
The Court: Overruled.

A. Shall I answer it?

The Court: Yes, answer it.

A. I did.
Q. Did you give that committee information concerning Adams?
A. I gave a sworn——

Mr. Rogers: We object again, sir.
The Court: I will let him answer it.

A. I gave a sworn statement to a gentleman in that office, tall bushy hair, I can't remember his name, in reference to Mr. Adams, yes.

Q. Was it Mr. James Hepbron?

A. That sounds like the name, but I will never forget his face. Bushy haired, looked like he never combed his hair.

The Court: Hepbron has no hair or very little.

A. Well this wasn't Mr. Hepbron then because he had a lot of hair and very unkempt.

Q. Did the man have some markings on the side of his face?

A. I believe he did.

Mr. Rogers: I object to this again, we certainly are getting far off the point, sir.

The Court: I will sustain the objection.

[fol. 49] Q. What prompted you to give information concerning Adams at that time?

Mr. Rogers: We object again, your Honor.

The Court: I don't know why we would get into that. I will sustain the objection on the state of the record as it is at present. You can make him your witness and bring it out, although I don't know then why it would be pertinent to this case.

Mr. Rogan: We always felt we had a right to test the credibility of the witness and particularly from the standpoint of what his motives were. Witnesses may have motives. It may be a salutary motive, it may be a patriotic duty and a civic duty, or it may be for vengeance.

The Court: I don't know if we can delve very much into that. They didn't go into that question at all. I will still sustain the objection and give you an exception. Do you think he has made a different statement at that time from what he is making now?

Mr. Rogan: No, it all goes to the motivation of the witness.

The Court: Do you think he made a different statement then from what he stated this morning? If you do I might feel a little differently about it.

Mr. Rogan: I don't know what statement he made before the Senate Crime Investigating Committee, and my only inquiry is his motive in doing it. What motivated him in making the statement.

The Court: That doesn't help me.

By Mr. Rogan:

Q. Jones, do we understand you were on good terms with Adams up until the time you went over to Washington before the Senate Crime Committee?

A. Just prior to that.

[fol. 50] Q. Just prior to that?

A. Just about a month I would say.

Q. Why did you go over there?

A. To give what testimony, what evidence I had, what I thought I had.

Q. For what reason?

A. I felt that I had been taken advantage of in a bona fide business transaction.

Mr. Maynard: We object to that and ask it be stricken out.

The Court: I will let it stand and give you an exception.

Q. Did you do it for vengeance?

A. Definitely. I made this statement, nobody would do that to me and get away with it.

Q. As a matter-of-fact you wrote an article for the Afro-American under date of January 12th in which you made the same statement, did you not?

A. I wouldn't say I wrote the article, but I worded the article.

Q. Well you worded it?

A. Yes, there is a difference in wording and writing. I will put it like this. I gave permission, your Honor, that it could be printed.

The Court: You gave an interview that incorporated that material in it?

A. That is right.

Q. You stated those reasons why you went over and stated that evidence before the Senate Crime Committee?

A. That is right.
Q. And you did it for vengeance?
A. You want me to answer yes or no?
Q. Yes.
A. Yes.

The Court: He has answered that once I think.

Q. Let's go back to November of——

The Court: Before you leave that question let me ask you this. Did you get a subpoena to come over to Washington to testify there?
[fol. 51] The Witness: No, sir, your Honor. I went on my own.
The Court: You volunteered?

A. Yes, sir.
Q. Did you also try to get a job on that Committee?

Mr. Rogers: We object to this.
The Court: I will sustain that, I see no purpose in it.

Q. Let's go back to November 1947. You say it was on a Sunday night that you received a telephone call?
A. It was on a Saturday night.
Q. Where did you receive that call?
A. At my home.
Q. You have a listed telephone number at your home or a private phone?
A. At the present time?
Q. No, at that time.
A. At that time it was an extension that ran from the drug store.
Q. But there was no telephone listing at that time to your home?
A. No.
Q. Prior to November 3rd you say it was 47——
A. Ask that question again?
Q. Prior to November 3rd, 1947 when you received a telephone call——
A. Yes. Did I have a telephone?
Q. No. How can you tell his Honor that the call came from William Adams, this William Adams?

A. Ask that question again please?
Q. Read the question.

(Question read by the reporter.)

A. All I can say is the individual that talked to me said he was Willie Adams.
Q. Did you recognize his voice?
A. Well it sounded like his voice. You know you don't talk that, what he was talking to me, you don't talk it long over the phone. It is as brief as possible. Sure, I will say I thought it was Willie Adams.
[fol. 52] Q. Had you prior to that date ever discussed with William Adams going into the numbers business?
A. No, I hadn't. I had never given the numbers a thought.
Q. Out of a clear sky by way of a telephone call from a man by the name of Adams, that was your first knowledge that you were to go into the numbers business?
A. Yes, that was the lead to it. After that I talked to Milton Foster.
Q. But never discussed with Adams prior to that time anything concerning numbers?
A. No, I had never given numbers a thought.
Q. Did you know that Adams was or was not in the numbers business at that time?
A. Are you asking me could I say definitely that he was?
Q. To your personal knowledge?
A. No.
Q. You could not?
A. No.
Q. Mr. Jones, you are a college graduate, aren't you?
A. Yes, I am.
Q. Formerly from Oklahoma?
A. That is right.
Q. You came to Baltimore in about 1944 or '45?
A. 1944 to be exact.
Q. You went into a business down at Turner's Station?

Mr. Maynard: We object.

A. Correct.

The Court: Overruled.

Q. You say you turned this money over to a Miss Arington in Adams Realty offices?

A. That is right.

Q. You didn't know the combination of the safe?

A. No, I did not.

Q. Did Adams ever know that that money was in the safe?

A. He did the day I walked in and put those books on the desk.

[fol. 53] Q. He did then?

A. Yes.

Q. Did Adams ever put the money in the safe himself?

A. No, he didn't. If I had wanted to when there was $29,000.00 I could have taken it all.

Q. It is not a question of taking it——

A. He didn't know anything about it.

Q. You turned it over each day to Miss Arington?

A. No, not each day.

Q. How often did you turn money over to her?

A. Periodically, it all depended on the size of the money I had in my possession.

Q. How would you get it out?

A. How would I get it out?

Q. (no response)

A. Just go up there and get it whenever I needed it.

Q. Would she have to open the safe for you?

A. At times if the safe was open I would just go in and get it. That is during the day, you know, if the combination wasn't turned on I would get it and put a receipt in there for it.

Q. During those months from November until March the 20th when you said you got out of the business did you ever discuss the numbers business with Adams?

A. I didn't see him.

Q. You didn't see him?

A. No, I didn't see him.

Q. From November until March?

A. That is right. I never socialized with him.

Q. You said you went to his office periodically and put money in the safe in the office?

A. When I would go there it would be around ten or ten thirty. I doubt that he was even getting up at that time.

Q. Did you have any arrangements with Adams whereby

you could put that money in the safe through Miss Arington?

A. No, Foster and I decided that. I suggested to Foster [fol. 54] where to put this stuff. As I said I didn't want all that money in my house.

Q. Now you say it was in September 1949 the occurrence at the golf course?

A. September of '49.

Q. Who brought up that conversation?

A. You mean on the golf course?

Q. Yes.

A. As I testified before I don't remember who brought that up. In a joking way I think I brought it up as they were passing through. I got to kidding, talking about some fellow had to go all the way to California when 500 or 501 came out. I happened to be in Oklahoma to see my mother when that happened. I didn't get back till the end of the first week after Labor Day and about a week thereafter I saw him on the golf course, and the start of the conversation was in my kidding about 500 coming out on a Friday, and 501 coming out on a Saturday, and everybody had to run.

Q. Is that all the conversation amounted to?

A. No, the conversation then went into what was the best way to operate those things from an economical standpoint. You don't go into anything that you are not making money, and the suggestion was made six to one. I brought that up.

Q. Is this conversation or were you trying to arrive at some agreement?

A. Personally at the outset if it had been worth while, a worth while operation I guess I would have been interested again. Keep in mind I got out of the first operation because there was no future in it.

Q. You say nothing materialized from the conversation?

A. Nothing at all.

Q. And nothing materialized and no agreement?

A. No, no, wasn't anything to agree on.

Q. Nothing materialized and no agreement as far as June 1950 was concerned?

A. No.

[fol. 55] Q. Who brought up that conversation?

A. I tried to bring out something, but it was overruled. Actually why I was in that office, and if your Honor would allow me, I would like to——

The Court: Just answer the question.

A. This is the only way I can answer it, your Honor, if you will indulge me, please.

The Court: No, you answer it the best way you can.

A. Well ask it again.
Q. Read the question.

(Question read by the reporter.)

A. I am not certain who brought it up. That was my testimony before. I say again I could have brought it up because I was interested in liquidating my debts.
Q. You were broke at the time, weren't you?
A. Yes, sir, I was definitely broke.
Q. Didn't Adams at that time tell you that he was not interested, that he had Carr's Beach, and that is all he could do?
A. He didn't tell me anything like that. He said if I could work that thing out that somebody else would have to put up the money, that was my testimony in the first trial.
Q. This Mr. Parks, Henry Parks, is that his name?
A. That is right.
Q. He is your friend, isn't he?
A. I take him to be my friend.
Q. Didn't you mention Henry Park's name?
A. Could have. I could have said I wonder if Parks has any money. I wouldn't be specific on that as I am on some things.
Q. Jones, where did you say this operation was on Calhoun Street?
A. Three hundred block Calhoun Street.
[fol. 56] Q. Did you ever see Adams there?
A. No, he never did come in there.
Q. You say you didn't discuss the lottery business with Adams at any time between November and March of '48?
A. No, I didn't, after that telephone call I just took over, I guess that is just one of my weaknesses. If I have charge of something I just take over, that is all.

Q. Did you ever give Adams any accounting of any monies?

A. No, I didn't give him any accounting other than I walked in—I might repeat, when I walked in that morning and said I was through with it, and the books spoke for themselves.

Q. Why did you do that, Mr. Jones?

The Court: Suspend for a minute.

(Interruption by the Grand Jury.)

The Court: Proceed.

Q. Now, was this your operation and that of Milton Foster?

A. Yes, Milton and I operated it.

Q. For your own benefit?

A. I would say yes, I operated it for my own benefit. I don't know what he was operating it for.

Q. Where is Milton Fostor now?

A. He is deceased.

Q. Referring to the office on Pennsylvania Avenue will you please describe that office in November 1947?

The Court: What year, Mr. Rogan, November of what year?

Q. '47, up to March 20th?

A. 1950?

Q. No, 1948.

A. I mean 1948. There were two desks, an adding machine, two windows with venetian blinds, a safe, telephone.

[fol. 57] Q. How many offices?

A. There was one office I believe, a back office, a private office. I think there were two offices, maybe three now.

Q. Which office did Miss Arington occupy?

A. That was the main office, the outer office, as you would come up the stairway, turned immediately to your right, and then another immediate right turn, and you would be in I guess what you would call the Realty office proper.

Q. Now Mr. Jones, do you know of your own knowledge from November '47 until June 1951 or 1950——

The Court: Well, which it is?

Q. 1950, or May 1950, whether that period of time to your knowledge Adams was in the numbers business?
A. You mean could I specifically place him in the numbers business?
Q. Yes.
A. No, I could not.

Mr. Rogan: That is all.

Redirect Examination.

By Mr. Rogers:

Q. One moment, Mr. Jones. Mr. Jones, in the 1947 operation, that is the 300 block North Calhoun Street, how much if anything did Adams back that business for?

Mr. Rogan: We object your Honor, because there's been no such testimony that he did back it.
The Court: Overruled.

Q. I said if anything.

The Court: I think if there is anything like that he can testify to it. I don't know. There doesn't have to be any——
Mr. Rogan: He has testified that Adams didn't put any money in the business.
[fol. 58] The Court: I will let him answer that. I think he testified, he certainly said just a moment ago he couldn't say Adams was in the numbers business during that time. Read that question again, Mr. Salzman.

(Testimony read by the reporter.)

The Court: I think that question is leading, I will sustain the objection.

Q. Why were you taken into the 1947 operation, Mr. Jones, if you know.

Mr. Rogan: Objected to.
The Court: Read that again.

(Question read by the reporter.)

The Court: Well he has answered that, he said he was taken into it to run it. I can tell you what he said. He

completely managed the business, he says that, that is his statement. I don't think we need go over that. How many men they had, eight men, didn't invest anything, he got from seventy five to one hundred fifty dollars a week which he took out himself, nobody paid him.

Q. Mr. Jones, do you know of your own knowledge who was backing that operation, sir?

Mr. Rogan: Objected to.
The Court: All right, I will let him answer it.

A. No, I don't. I will put it like this.

The Court: Well he says he doesn't know.

A. I don't know that. I banked it, I kept the money.

Q. I asked you "backer"?

Mr. Rogan: Objected to.
The Court: You were pretty far back when it came to putting up money.

[fol. 59] A. I didn't put up any money.
Q. Do you know who put up the money, Mr. Jones?
A. No, I don't. I didn't see any money.

Mr. Rogers: No further questions, your Honor.
The Court: Well I am going to ask you a question or two. Did you ever have a hit that you had to raise money outside of that safe?
The Witness: No.
The Court: So you never had to get any money from anyone?
The Witness: No, sir.
The Court: All right.
Mr. Rogers: No further questions, your Honor.

(Witness excused.)

Mr. Rogan: We would like to make a motion at this time to strike out all of the witness's testimony.
The Court: No, I won't do that.
Mr. Ford: May we be heard on it?
The Court: I can hear you on it, but I think it is waste

of time, I won't strike out all the witness's testimony. There are some things in there he knows.

Mr. Ford: I would like to refer your Honor to the Archer case.

The Court: I don't think this is the time to do anything like that. The State hasn't concluded its case. I will hear you at the end of the State's case. I think that is the time to make any motion like that. We certainly are not going to try this case by going through after each witness testifies——

Mr. Rogan: Just so we have the right to make the motion at the proper time.

[fol. 60] The Court: I will hear you at the end of the State's case.

Alfred F. Goldstein, a witness of lawful age, produced on behalf of the State, after being duly sworn in accordance with law, was examined and testified as follows:

Direct Examination.

By The Bailiff:

Q. State your name.

A. My name is Alfred F. Goldstein.

Q. Your address?

A. 151 Wilmington Place, South East, Washington 20, D. C.

By Mr. Maynard:

Q. What is your business or occupation, Mr. Goldstein?

A. I am a Stenotype Verbatim Reporter.

Q. For what firm, if any?

A. For the firm of Ward and Paul, in Washington, D. C.

Q. On July 2nd, 1951 were you or were you not the reporter for the Special Committee to investigate organized crime in Interstate Commerce, United States Senate, formerly known as the Kefauver Committee, but at that time known as the O'Conor Committee?

A. Yes, I was.

Q. Did you take notes of the testimony of one William Adams?

A. Yes, I remember doing that.
Q. You testified from those notes at the last trial of this case?
A. That is right, sir.
Q. Now do you have those notes with you today?
A. No, I do not.
Q. Where are they?
A. They apparently have gone astray.
[fol. 61] Q. Did you make a diligent search for them?
A. Yes, we did after we received a call from you a few days ago.

Mr. Maynard: If your Honor pleases, we have the transcript of testimony taken at the former trial, and we would like to offer that transcript as being an exact transcription of his testimony.

The Court: Well you better lay the foundation for it. You have gone part of the way. Ask him about the transcript, let him say whether or not he had the transcript made, whether he has compared it.

Mr. Maynard: Well I will have to put on Mr. Salzman, the Court Reporter, to show that. Would you step down a minute please?

Mr. Ford: We object to his testimony.

The Court: We have to find out now whether the transcript he has is an accurate transcription.

(Witness temporarily excused.)

Sidney Salzman, a witness of lawful age, produced on behalf of the State, after being duly sworn in accordance with law, was examined and testified as follows:

Mr. Maynard: How is he going to take his own notes?
The Court: I guess he can, go ahead.

Direct examination.

By Mr. Maynard:

Q. What official position do you occupy?
A. Official Court Reporter under the Supreme Bench of Baltimore City.

Q. Did you occupy that position on December 19th and 20th, 1951?

A. I did.

[fol. 62] Q. Did you take testimony in the case of State versus William Adams and Walter Rouse of one Alfred F. Goldstein, the man who was just on the stand?

A. I did.

Q. Did you have occasion to transcribe that testimony for use on motion for a new trial before the Supreme Bench of Baltimore City?

A. The testimony was transcribed. I don't recall at this time whether I dictated it on cylinders or had a girl transcribe it directly from my notes.

Q. Is this an accurate transcription from your notes of the testimony of Mr. Goldstein?

Mr. Ford: Objected to. I don't think he is in position to answer that question.

The Court: Well he might be, I don't know whether he is or not.

A. As far as I know it is a correct transcription of the testimony.

The Court: Well that wasn't the question that was asked. You are asked whether it was an accurate transcription of the testimony or not. You can answer that yes or not.

A. I can't answer it yes or no, but I can check from my notes with the transcript and determine that right now.

By Mr. Maynard:

Q. You can if required testify directly from your notes?

A. I can.

The Court: That is what I think he better do.

Mr. Maynard: There was a stipulation at the time this case went up to the Supreme Bench signed by the State and defense that it was an accurate transcript of the evidence.

The Court: You mean the record that you are holding in your hand was stipulated——

[fol. 63] Mr. Maynard: Yes, I have the State's Attorney's copy, but it was signed by attorneys for both the State and the defense. Is there any question as to the accuracy of the transcript, Mr. Rogan?

The Court: Well I think this. The notes of Mr. Salzman might be one step nearer the original. If counsel for the defense insists on it I will have Mr. Salzman testify from his notes, but it seems to me that that is taking a very technical standpoint.

Mr. Rogan: We don't want to be technical about it. We just wanted to proceed in the proper order, and we don't want to put Mr. Salzman to the inconvenience if he will say under those circumstances that that is a proper transcript. We will accept his word for that.

The Court: Will you say that? You supplied it as an accurate copy?

A. I certainly did.

The Court: Have you any reason to believe that it is inaccurate?

A. I have not.

The Court: Do you want any more?
Mr. Rogan: No.

(Witness excused.)

Mr. Maynard: I don't know just how we would offer it, have Mr. Goldstein read it or shall I read it to the Court?

The Court: I think you might as well read it yourself, Mr. Maynard. You offer it of course as testimony that was given in this court?

Mr. Maynard: Yes, sir.

The Court: As an authentic transcript of the record before the Kefauver Committee or the O'Conor Committee [fol. 64] rather is the way it was at that time, and which was supplied you by Mr. Goldstein who made the copy for the O'Conor Committee, isn't that right?

Mr. Maynard: That is correct, but we had Mr. Goldstein on the stand on December 20th and he testified at

that time in Court on the previous trial of this case from his original notes.

The Court: Well now has he seen this copy you have in your hand?

Mr. Maynard: No, sir, and he doesn't have his original notes. They have disappeared.

The Court: Well I will admit it.

Mr. Rogan: Did he transcribe it?

Mr. Maynard: Of course not.

The Court: This, as I understand it, gentlemen, is what Mr. Goldstein read in the previous trial from his notes, and it is offered as a substitute for Mr. Goldstein's original notes which he is now unable to find and read again in this trial.

Mr. Rogan: We understand that.

The Court: Go ahead.

Mr. Ford: We object.

The Court: You object for a matter of form of proof or because of the substance of this matter?

Mr. Ford: Of course we object in line with the reasons that were assigned in our motion to exclude this testimony.

The Court: That is what I have been assuming.

Mr. Ford: We would also like to object generally if your Honor please, and specifically to questions and statements of counsel.

[fol. 65] The Court: Well I understand that, you object to the testimony for substantive reasons.

Mr. Ford: Yes, sir.

The Court: You think it is inadmissible as testimony in this case.

Mr. Ford: That is right.

The Court: I understand that. You don't raise any question about this being an accurate transcription of the notes that were read in the last trial, do you?

Mr. Ford: No, sir, we have just agreed on that.

The Court: That is what I understood.

Mr. Ford: We would like to offer the general objection.

The Court: Mr. Maynard, you go ahead, and I will give you a general exception on the admission of this transcript as testimony in this case.

Mr. Maynard then read from the aforementioned transcript as follows:

"ALFRED F. GOLDSTEIN, a witness of lawful age, produced on behalf of the State, after being duly sworn in accordance with law, was examined and testified as follows:

"Direct examination.

"By Mr. Maynard:

"Q. What is your name and address?

"Mr. Ingram: We object to any testimony as against Rouse.

"The Court: Overruled.

"A. My name is Alfred F. Goldstein. I live at 151 Wilmington Place, South East, Washington, D. C.

[fol. 66] "Q. Your business or occupation?

"A. I am a Stenotype Reporter.

"Q. For what firm?

"A. With Ward and Paul in Washington, D. C.

"Q. On July 2nd, 1951 were you or were you not the reporter for the Special Committee to Investigate Organized Crime in Interstate Commerce, United States Senate, known as the Kefauver Committee?

"A. Yes, on that day I reported an executive session for that Committee.

"Q. Do you recall when one William Adams appeared before that Committee and testified?

"A. I have looked over my notes, and it indicates that that is so, yes.

"The Court: Just a moment. You called it the Kefauver Committee. According to my information at that time it was already the O'Conor Committee, wasn't it?"

Mr. Rogan: We object to the comments of the Court.

The Court: I will strike from the testimony any comments of the Court at that time.

Mr. Maynard continued reading as follows:

"The Witness: That is correct, Your Honor.

"Mr. Maynard: I stand corrected.

"The Witness: Senator O'Conor was chairman at that time.

"Q. Can you tell the Court and jury who if anyone appeared with William Adams as his counsel on that day?

"A. My notes indicate Mr. J. Francis Ford, and Mr. Joseph Rogan.

"Q. Mr. Goldstein, would you turn to your notes which would correspond with page 27 of the printed record where Mr. Rice the interrogator asked 'how does the number come up—'"

(Colloquy followed between Court and counsel.)

[fol. 67] "The Witness: The question by Mr. Rice reads as follows:

"Q. How does the number come up? Where do they get it from? Three seventy-two, what was it yesterday?

"A. I don't know.

"Q. Suppose it was 372, how would they get it?

"A. When I was in it you took it from the races.

"Q. From the total mutuel at the track?

"A. Yes, sir.

"Q. Get it out of the paper?

"A. Yes, sir.

"Q. Have they stopped doing that?

"A. Wouldn't know.

"Q. You say when you were in it, when was that?

"A. I have been out of it now for sometime.

"Q. How long?

"A. More than a year.

"Q. How much more?

"A. About two months more than a year.

"Q. You got out of it around May of 1950?

"A. Yes, sir."

"Mr. Maynard: Now suppose you stop there, and go further to where Mr. Rice is asking the question 'Going back to the time you were in the numbers business before May of 1950.'

"The Witness: Yes, I have that portion.

"Mr. Maynard: Will you go ahead?

"The Witness (reading):

"Q. Going back to the time you were in the numbers business before May of 1950, last year, where was your headquarters, where did you operate from?

"A. I didn't exactly have any headquarters. We just probably operated here today and another place tomorrow.

"Q. You were moving around?

"A. There wasn't much to my operation.

[fol. 68] "Q. You had another man in there with you, didn't you?

"A. No more than one.

"Q. Who was that one?

"A. I say it wouldn't be any more than one.

"Q. Who was the one that was with you if it was only one?

"A. I say it wouldn't be any more than one.

"Q. You mean you were doing it by yourself?

"A. More or less.

"Q. You mean you were writing numbers yourself? You weren't writing numbers? You were the lay-off man, weren't you?

"A. I don't mean that. When you spoke about the big book and the night book I think you were a little mixed. Probably the little book and the big book.

"Q. Straighten me out on that.

"A. You have some fellows that take in the numbers. They take play up to 25¢. That is called the little book which they give the writers. They get less money from the writers for that then they would from what you probably said is the big book. The big book is a book that plays bet odds to the players.

"Q. Six to seven hundred to one probably up to eight hundred?

"A. Probably so.

"Q. What did they pay on this big book when you quit?

"A. Seven to one.

"Q. Is that single action?

"A. It would be seven hundred to one.

"Q. On the three numbers?

"A. That is right.

"Q. How about the writer, what was his percentage?

"A. There wouldn't be a writer directly involved in this. I don't know if the writer got anything on that particular business or not because the way I got mine more or less would be from some of these fellows that would take the little book from the writer. They would get all the play. [fol. 69] "Q. They would turn it into you more or less?

"A. No, they would more or less keep all the little play. We had a line called the quarter. You had to pay 25¢ in order to be in on the big book.

"Q. What would be the smallest one you would take?

"A. Twenty-five cents.

"Q. You wouldn't take anything over 25¢. You wouldn't pay a percentage?

"A. You wouldn't get a dollar for dollar. You have probably — this man would give you eighty or eighty-five cents for the dollar. With the dollar you would get a dollar's worth of play, if you get somebody else that gives him better. If you didn't meet that you wouldn't have the play at all. He had control of the play actually.

"Q. What would your total daily book be, the amount of action you were handling a day when you were in it going full blast?

"A. I guess around close to a thousand dollars a day.

"Q. A thousand dollars a day?

"A. Around that, a little better sometimes.

"Q. Did you have a ticker? Yours are all numbers? You didn't have any horse bets?

"A. No, sir, I never had a horse bet in my life.

"Q. This is all numbers, a thousand dollars a day? How many people would be betting that into you so it would aggregate a thousand dollars?

"A. I wouldn't be able to tell that.

"Q. It would vary?

"A. I don't know. The way I would get it through like if you were a banker and you were keeping the little stuff and you would give me your package of large stuff because the writers write more or less smaller stuff because they get a percentage off that and naturally they get more nickels and pennies and dimes play than they would quarter play or more, so you would be the one that ordinarily would have control of that knowing how much because——

[fol. 70] "Q. How many people would you have like me that would be laying in to you?

"A. I believe probably ten.

"Q. Where would they find you to lay it in to you, where would they call you? You would take it over the telephone?

"A. Sometimes you would probably take some. You might sometimes. They would get you a little involved, come around with it.

"Q. Who kept the records for you when you were running that operation?

"A. I kept them.

"Q. You kept them yourself?

"A. Yes, sir.

"Q. You did all the bookkeeping?

"A. I had probably someone who helped me. I wouldn't say I did it all.

"Who would help you?

"A. I had one other person.

"Q. Who was that other person?

"A. You want me to give their name?

"Q. Yes.

"A. I wouldn't like to do that.

"Q. We direct you to.

"Senator Hunt: The acting chairman directs you to answer the question."

"A. I would refuse to answer that on the grounds it might incriminate me in my tax investigation.

"Q. How does the name of another person going to incriminate you in your tax investigation? This is somebody else we are talking about.

"A. I wouldn't know.

"Q. You wouldn't know?

"A. No, sir.

"Q. Is this other person a man or woman?

"A. I have the same answer. I would refuse to answer that on the same grounds.

"Q. I think Mr. Chairman the witness having opened the door by indicating that there was another person is compelled to answer the question as to the identity of the person.

[fol. 71] "Senator Hunt: There isn't anyway we can compel the witness to answer, but the chair cannot understand how giving the name of another person would incriminate the witness on the grounds or the promise that you stated, your counsel stated in the opening remarks, due to the investigation of your income tax. Does the witness care to state on what grounds you feel this would incriminate you, in what manner?"

"A. On the same ground that it might tend to incriminate me as far as the income tax investigation is concerned."

Mr. Rogan: I want to object to anything I said.

Mr. Maynard: This was testified to before——

The Court: It is not the testimony that was had before, it is the testimony that was before the O'Conor Committee.

Mr. Maynard: This is the testimony I am reading from before——

Mr. Rogan: But it is what I said.

Mr. Maynard: This is what you said over in Washington.

Mr. Rogan: And that is what I object to especially.

The Court: Whatever was said by Adams is what we are interested in, not what Mr. Rogan said or Mr. Ford said or anybody else said because after all they couldn't very well put words in his mouth.

Mr. Maynard: Mr. Rogan must have changed his mind if he doesn't want to hear what he said.

(Mr. Maynard continued reading as follows):

"Senator Hunt:

"Q. The witness still refuses to answer, is that correct?

"A. Yes.

"Q. One more question. You say you quit the business about May of 1950. To whom did you turn over your numbers business?

"A. Not to anyone.

[fol. 72] "Q. You left it collapse?

"A. I wouldn't have anyone working for me. I wouldn't have turned it over to anybody. I would not take action from the fellows who were giving it to me.

"Q. At the time you were taking action did you layoff to anyone? If you got too much on one number that you didn't want to hold, would you call someone to take that? Would you take any amount bet with you?

"A. You always had a limit.

"Q. What was your limit?

"A. Around a dollar.

"Q. That doesn't make sense. You have a thousand dollar book.

"A. That is from one person.

"Q. That would make a thousand people.

"A. Not that way. If you had eight or ten people you were getting play from, if you had a dollar with each person and they were fortunate enough to have the same.

"Q. What was the most you would take on any one number?

"A. It would be a dollar limit to each person that was giving me play.

"Q. A dollar limit on each number?

"A. Sometime it might be a little more.

"Q. You never laid off to *o*nybody?

"A. I played some numbers myself, a few. I played some numbers.

"Q. When you placed them would you place them out of town?

"A. No, sir.

"Q. Are you sure about that?

"A. I am positive about that.

"Q. When you wanted to place a number you would place more than a dollar, wouldn't you? No point in your betting less than a dollar?

"A. If I would have say ten, twelve people giving me, and I would wind up with each one, say eight of them having a dollar or something like that, that would be the number I would play to protect myself.

[fol. 73] "Q. You would layoff $4.00 and give that to someone else?

"A. Yes.

"Q. Who would you give that to?

"A. There are plenty people to give it to that work for other people.

"Q. Can you remember any of them?
"A. No, sir.
"Q. You can't remember any of those?
"A. No, sir.
"Mr. Maynard: That is the end of the testimony. Witness with you."

"Cross-examination.

"By Mr. Ford:

"Q. Mr. Goldstein, I would like to direct your attention to the first part of Mr. Adams examination, and I think it will be——
"A. Is that where I began with the question 'how does the number come up?' "
"Q. No.

"The Court: I have a printed copy, tell us what you are looking for.
"Mr. Ford: It is the ninth question.
"The Court: Start it, Mr. Ford.

"Mr. Rice:

"Q. Are you appearing here in response to a subpoena?
"A. Oh, you mean at the beginning of the testimony?
"Q. Yes, certainly.
"A. You mean the very beginning. See, I have only my notes in front of me and you have to orient me.

"The Court: What is the paper you have, Mr. Rogan, is that a typewritten transcript?
"Mr. Ford: Yes, sir."

Mr. Ford: I don't think this ought to be admitted.
[fol. 74] The Court: He isn't reading it, he is just trying to place us on it. Go ahead.

(Mr. Maynard continued reading as follows):

"By Mr. Ford:

"Q. Mr. Rice asked this question, did he not? 'Are you appearing here in response to a subpoena?'

"The Court: What is the answer?

"Q. The answer is, 'Yes, sir.' "

The Court: Who said that, "Yes, sir?"

Mr. Maynard: Mr. Goldstein.

The Court: Well that really isn't material for your record.

Mr. Maynard: I am wrong. Mr. Ford put this question. "Mr. Rice asked this question, did he not? 'Are you appearing here in response to a subpoena?' " And Mr. Goldstein said, "The answer is yes," William Adams answer I take it, isn't that correct.

Mr. Rogan: That is right.

Mr. Maynard: The next question is "Did the subpoena call for certain books and records?", and I objected, and the Court overruled me, and they went ahead, and answer is "Yes, sir." "Now are these the subpoenas—" and Mr. Rogers objected. The Court says, well he can answer—somebody said well he can answer it if he knows.

"The Court: He wouldn't know that. Do you know?

"The Witness: No, sir.

"The Court: You just do what Mr. Salzman is doing now?

"The Witness: That is right. I had nothing to do with the subpoenaing of the witness or anything of the sort. I was just taking a record at the hearing."

[fol. 75] Mr. Maynard: Then there is colloquy with counsel and the Court.

The Court: Well do you have any more testimony of Adams?

Mr. Maynard: That is just what I am looking for. I think that is all, sir.

The Court: All right now gentlemen I am going to strike from that reading anything that was not said by Adams.

Mr. Maynard: Of course, that doesn't include the question by various people who put the questions?

The Court: No, you will need those questions, but so far as we are concerned it is Adams answers that are part of our record.

Mr. Ford: We would like to move to strike out that testimony.

The Court: I overrule the motion.

Mr. Ford: At the same time we want to offer at this time the original subpœnas that were attached to the motion.

The Court: Well you can offer those in your case.

Mr. Maynard: Can we excuse Mr. Goldstein, he wishes to return to Washington?

The Court: Will you need him?

Mr. Rogan: No.

The Court: All right. We will excuse you, Mr. Goldstein.

(Witness excused.)

[fol. 76] Captain Alexander L. Emerson, a witness of lawful age, produced on behalf of the State, after being duly sworn in accordance with law, was examined and testified as follows:

Direct Examination.

By the Bailiff:

Q. State you - name and assignment.

A. Captain Alexander L. Emerson, Headquarters Division, Baltimore City Police Department.

By Mr. Maynard:

Q. Captain Emerson, how long have you been in the Police Department?

A. A little over thirty years.

Q. You are still connected with the vice squad?

A. I am.

Q. How long have you been connected with the vice squad?

A. I would say almost twelve years.

Q. The vice squad handles what type of cases?

A. Gambling and all kinds of vice.

Q. Does that include lottery?

A. It does, lottery, bookmaking, crap games.

Q. Can you give the Court some idea roughly of how many lottery cases you have handled during the time you have been on the force?

A. Thousands.

Q. We offer him as a qualified expert witness, if your Honor please.

The Court: Well what do you expect to examine him on?

Mr. Maynard: I want to question him as to what lay-off means, and how it operates to explain Adams's testimony that he laid off all above a dollar.

[fol. 77] The Court: Well that is all right, but don't ask him anything except in connection with the testimony that Adams gave.

Q. You heard the testimony read here of William Adams over in Washington?

A. Yes, sir.

Q. Will you explain from your experience what it means to lay-off in lottery, and particularly laying off a dollar and over.

Mr. Ford: We object.

The Court: Overruled.

A. All over 25¢ the lottery pays off seven to one, that is the average pay-off.

Mr. Ford: We move to strike it out.

The Court: Sustain the objection. We don't want a general resume.

Q. We are asking about the lay-off.

The Court: What does the word lay-off mean in lottery play.

A. Lay-off means when they have too much action they call it into another backer.

Q. What is the purpose of that?

A. That is in case there is a hit on a number, it will not hurt that particular backer too much himself, and then it is shared with the other backer, and sometimes——

Mr. Ford: We move to strike it out.

The Court: Overruled.

A. Sometimes the backer tells them we have got all——

Mr. Ford: Object.

The Court: I think you have answered the question. Strike out the last.

[fol. 78] Mr. Maynard: I think that is what I wanted to get before the Court.
The Court: Anything else?

Cross Examination.

By Mr. Ford:

Q. Let me ask you a question. Do you play numbers?
A. No, sir.

Mr. Ford: We move his testimony be striken out.
The Court: You feel no one who hasn't played can be qualified?

Q. Let me ask you one more question. Can a man play numbers with himself Captain?

Mr. Rogers: We object to that.

A. Play numbers with himself?

The Court: I will sustain that objection.

Q. Can a man bet with himself?

Mr. Rogers: We object. This was not covered.
The Court: I will sustain it.
Mr. Ford: All right, no further questions.

(Witness excused.)

Mr. Maynard: That is the State's case, if your Honor pleases.
Mr. Ford: We move to strike out the testimony of Maurice Jones, and the testimony of Mr. Goldstein, and also want to move for a directed verdict.
The Court: Well, I will hear you on it.

(Mr. Ford argued, followed by Mr. Rogers, and then Mr. Ford closed.)

(Adjournment then followed for noon hour recess.)

[fol. 79] After Recess

Baltimore, Maryland,
May 26, 1952.

Pursuant to adjournment for noon hour recess the cause came on for further hearing.

The Clerk: William Adams, Mr. Rogan, Mr. Ford, Mr. Maynard, Mr. Rogers.

The Court: Gentlemen, I told you I would let you know about this motion after lunch, and I have given it the fullest consideration that I could in such a short time, and I have concluded to deny it.

The reasons are these. So far as the lottery, the substantive charge, is concerned, that is the lottery business that Jones testified to conducting I think there is testimony enough if believed by a jury to have it go to the jury. I can't lose sight of the fact that the money that was taken in over a period from November till May of the following year was taken up to the defendant's place of business, put in a safe up there that belonged to him, and that went on from day to day as the money was collected. It seems to me I would be very naive if I concluded that the defendant had nothing to do with that business when the money was going up there all the time and being put in his safe. That is number one.

Mr. Rogan: Jones's testimony, your Honor is that at no time did Adams know that the money was being put in there.

The Court: I know that, but it was Adams's safe.

So much for that.

Now on the question of limitations which gives me greater concern, I think the testimony is light. It is not what I would call heavy weight testimony, but I think there is enough in there to take care of the charge as a continuing offense when we couple with it what Jones [fol. 80] testifies to about taking the proceeds of the lottery up there during those months, along with the testimony of the defendant in the O'Conor Committee that he was in the business until 1950.

That is very briefly the basis for my denial of the motion Do you want to go ahead?

Mr. Rogan: Yes, we have one witness.

CECELIA MCNEAL a witness of lawful age, produced on behalf of the defendant, after being duly sworn in accordance with law, was examined and testified as follows:

Direct examination.

By the Bailiff:

Q. State your name.
A. Cecelia McNeal.
Q. Your address?
A. 3012 Baker Street.

By Mr. Rogan:

Q. Are you married, Mrs. McNeal?
A. I am.
Q. Where are you employed?
A. I am employed at the Federal Social Security Agency, Candler Building.
Q. What kind of work do you do there?
A. Clerical work of various kinds. I mean there are three, four or five jobs included.
Q. Were you formerly Miss Arington?
A. I was.
Q. Were you ever in the employ of the Adams Realty Company or William Adams?
A. I was.
Q. Over what period of time?
A. December 16th, 1940 until August 9th, 1948.
[fol. 81] Q. What was the nature of your duties during that time?
A. I was called secretary-bookkeeper. I collected rents, was the major part of my operation. Collected rents all during the day the whole time I was there. I also kept books for the night club just below the Adams Realty, I mean under the building of Adams Realty. I wrote checks, I made monthly statements for not income taxes but taxes relating to payroll. I made the payroll, issued payroll envelopes and made deposits, not made deposits, but compiled the deposits, and the manager took the money to the bank.
Q. Where were these offices located?

A. These offices were located at 1519 Pennsylvania Avenue.

Q. Directing your attention to November 1947 through to March 20th, 1948, how many offices were there?

A. There was one office at that location from that time up until the time I left, August 9th, 1948. When I say one office I mean an office within the same four walls.

Q. There is no private office except the one general office?

A. No. My desk was directly across from Mr. Adams's desk.

Q. Did you have a safe in that office?

A. Yes.

Q. Did the safe have a combination?

A. Yes.

Q. Who knew the combination?

A. Mr. Adams and I.

Q. What did you keep in the safe?

A. I kept a cash box, a petit cash box, my check books, my ledgers, the rental ledgers and also the ledgers for the night club business.

Q. Would you open the safe in the morning?

A. Opened it every morning, got the necessary books out that I needed to work with, and then locked it.

Q. What were your hours?

A. My hours were nine to five.

Q. Did you close the safe at night?

A. Always.

[fol. 82] Q. When you went out to lunch did you close the safe?

A. Sometimes if we were expecting a delivery and someone relieved me for lunch, and I would lock the safe, but leave someone in the office.

Q. Do you know Maurice Jones?

A. Yes I do.

Q. Did Maurice Jones have any arrangement with you whereby you put money in that safe for Maurice Jones in any amount at any time between November 1947 and March 1948?

A. I had no arrangements with no one except Mr. Adams to put money in that safe.

Q. Did Maurice Jones ever give you any money to put in that safe?

A. No, he didn't.

Q. Did you ever see Maurice Jones take out any money from that safe?

A. He never could.

Q. Was there ever as much as $29,000.00 at any time in that safe?

A. The highest amount that I have ever seen is between one thousand and fifteen hundred dollars, and that would be for the receipts for probably a week-end at the night club business or either a settlement for property, and usually the property settlement was in a check form.

Mr. Rogan: Witness with you.

Cross examination.

By Mr. Maynard:

Q. Where was Adams's private office?

A. As I know he had no private office. He and I occupied the same office.

Q. Didn't he have a private office there at 1519 Pennsylvania?

A. Not during my stay.

Q. Is that upstairs over the Casino?

A. The first door you come to over the Casino.

Q. How many rooms up there?

A. There is one room, the confines of his office.

[fol. 83] Q. There was a safe there?

A. Yes.

Q. By the way, you didn't testify at the last trial at all, did you?

A. No, I didn't.

Q. Weren't summoned or anything last trial?

A. No.

Q. You say you and Adams alone knew the combination?

A. That is right.

Q. What delivery would you expect during the middle of the day?

A. Whiskey for the downstairs or either supplies to carry on the business of the night club.

Q. You wouldn't put that in the safe, would you?

A. No, but there were checks there, and also some bills were paid with cash, small bills.

Q. Do you know that man Foster?

A. I have seen him.

Q. You have seen him there at 1519, haven't you?

A. Yes, I have.

Q. How often?

A. Very very seldom.

Q. He was killed some years ago in an automobile accident, wasn't he?

A. So I understand.

Q. You have seen Maurice Jones there at 1519?

A. Yes, I have.

Q. How often have you seen him there?

A. I have seen him more often because he was the proprietor or manager of Village Stores Incorporated, and his books were kept up there.

Q. Maurice Jones books were kept there?

A. Yes, sir.

Q. You have seen Henry Parks there, haven't you?

A. Yes, I have.

Q. How often did you see Henry Parks there.

A. I used to see him almost every day because he was the associate broker in the Adams Realty Company.

Q. When did Parks become the associate broker?

A. I really don't know the date.

[fol. 84] Q. I don't mean the day of the week or the day of the month, but about when did he become——

A. I don't know even the year. I could not truthfully say I know when he became——

Q. You say you and Adams were the only ones employed there at the Adams Realty?

A. I was the only one employed there.

Q. How about Bates?

A. Whom?

Q. Roy Bates?

A. I know no Roy Bates.

Q. Well he was the agent for the Adams Realty Company wasn't he?

A. Not that I know of.

Q. Not while you were there?

A. No, sir. He had one employee, and I made the payrolls, sent in the forms each quarter.

Mr. Maynard: All right.

Redirect examination.

Mr. Rogan:

Q. Just one question. You referred to the Village Store and the fact there was a bookkeeper there that kept the books of the Village Store that was operated by Maurice Jones?

A. Yes.

Mr. Maynard: We object.
The Court: Why do you object to it?
Mr. Maynard: I think we are going far afield now.
The Court: Somebody that was employed in this place?
Mr. Rogan: He brought it out.
Mr. Maynard: I didn't bring it out.
The Court: Read that to me.

(Testimony read by the reporter)

[fol. 85] The Court: Ask a question.

Q. Was that prior to 1947 the Village Store business?

A. It was prior to '47, possibly carried over into '47, but I think it was prior to '47.

Mr. Rogan: That is all, your Honor.

Recross-examination.

By Mr. Maynard:

Q. Did you help William Adams in anything else besides the Real Estate?

A. I had a full time job with those books up in that office.

Q. Did you keep all of his books?

A. I kept all of the Real Estate books.

Q. Did you keep any books covering any other activity?

A. I know of no other books he had that covers any other activities.

Mr. Maynard: All right.

By Mr. Rogan:

Q. This Bates you say he was an auditor?

Mr. Rogers: I object. She said she had never heard of him.

A. I know no Bates.

Q. Bullock was the bookkeeper.

The Court: I understood her to say she didn't know him.

A. I don't, I know no one by the name of Bates.

Q. This man that kept the books for the Village Store, Maurice Jones's business, was that located in your office or in an office down the hall?

Mr. Maynard: We object. That was prior to '47.

[fol. 86] The Court: I don't know why we would be interested in that if it was prior to '47. He couldn't know very much about your client and what he is charged with today.

Mr. Rogan: We didn't want to make it appear that this auditor was employedin Adams's office.

The Court: Not while anything we are interested in was possibly going on.

Mr. Rogan: That is all.

(Witness excused.)

Mr. Rogan: That is our case, your Honor.

Mr. Ford: We would like to renew our motion.

The Court: Is that all?

Mr. Ford: That is our case.

The Court: I will overrule it, and I will hear you on it, on the main question.

Mr. Rogers: The State will make a short opening argument.

(Argument then followed.)

The Court: I have listened very carefully to the testimony in this case, and I think if I believe the testimony of Jones there is enough in it to find a basis that the defendant was in the lottery business at the time Jones said he was there.

I have mentioned before one or two things, and one of them was the use of the safe for the keeping of the proceeds of the lottery business. There isn't doubt in my mind from what Jones says, as well as from what the bookkeeper said, that Jones was around that place, and around there quite a good deal. She put it that he was in some connection with a store business, but he says he wasn't there with the Village Store business. Jones said he was there in this [fol. 87] lottery business, and that he ran it from November up until the following March or May I think it was he said.

Mr. Maynard: March 20th.

The Court: March 20th of '48. I believe he was there in the lottery business. I believe he was running it for Adams. I don't know any reason why he would have access to that safe at all if it wasn't to put money in or take money out. That is what safes are for, that is what they are kept for.

When we get around to the defendant, and the greatest trouble I have frankly with the case is on the question of limitations, when I get around to the testimony of the defendant in the statements that he made before the O'Conor Committee I think he brings himself squarely within the limitations when he puts himself up to 1950 as the time he was in the lottery business. We don't hear of any other lottery business that he was in except this business which Jones says he was in, and which he left full-fledged and running as a lottery business. When Jones left it, when he walked in there and threw his papers down in front of Adams, the business wasn't wound up or anything of the kind. It was then a full-fledged lottery business employing about eight people. Jones quit, he didn't wind it up or anything of the kind, and I think with Adams saying that he continued in that business until 1950 there is every indication that it was the business that Jones was running in 1948 and no other business.

I find there is a kind of corroboration in this talk about the new operation in 1950.

I find Adams guilty on the 1st count of the indictment.

You want me to withhold sentence?

Mr. Rogan: Yes, your Honor, we want to prepare a motion.

[fol. 88] IN THE CRIMINAL COURT OF BALTIMORE

STIPULATION

It is stipulated by and between counsel on behalf of the State and counsel for the defendant that the aforegoing transcript of testimony is and shall be considered the agreed statement of facts in the above entitled case.

(Signed) William H. Maynard, Deputy State's Attorney. (Signed) Joseph H. A. Rogan, J. Francis Ford, Attorney for the Defendant.

IN THE CRIMINAL COURT OF BALTIMORE

Baltimore, Maryland,
December 2, 1952.

Before Honorable E. Paul Mason, Judge

SENTENCE

MASON, J. (Orally):

I don't take the exact view of this case that you do, Mr. Rogan, except in one particular, and I do believe that repentance is a very valuable thing when it is coupled with substantial evidence of repentance. I can't say any more. There is nothing in this case to show that the defendant has made any substantial evidences of repentance, and I have to take the record as it is.

Now that record I have read not once but many times, and I have been unable to change my mind at any time after the reading of the record several times. I have carefully reviewed it. I think your client is one of the largest operators that ever operated in Baltimore City. I believe that. The record certainly shows substantial operations, and the [fol. 89] sentence that I impose on him will be mainly with thought that it is preventive, and not otherwise.

Of course, I believe it is a serious offense to write numbers, but a more serious offense is to conspire with others to maintain people in the writing of numbers, and to maintain an organization or operation whose sole purpose is to defeat the law in the writing of numbers on successive days

over a long period of time, to wilfully defeat and flout the law let us say many times each day. I regard that as much more serious than the we will say one time offender who in the heat of conflict or something of the kind breaks the law. That is an occasional thing. This wasn't occasional, it was continuous over a long period of time.

Your client has been found guilty of that offense of conspiracy and it extended over some period of time.

With that in mind, with the thought that the offense has been neither casual or trivial but substantial, defiant and continuous, I think it requires a severe and adequate penalty as a warning or rebuke to others who may be engaged in this same operation. I can't think otherwise about it.

With that in mind and in view the sentence of the Court is to pay a fine of two thousand dollars, and to serve a period of seven years in the Maryland Penitentiary. I want no demonstration from anybody at this time. That is all I have to say.

IN THE CRIMINAL COURT OF BALTIMORE

MOTION FOR A NEW TRIAL—Filed May 29, 1952

Now comes William Adams, the Defendant, by Joseph H. A. Rogan and J. Francis Ford, his Attorneys, and moves that a new trial be ordered in the above entitled case for the following reasons:

(1) Because the verdict is against the evidence.

[fol. 90] (2) Because the verdict is against the weight of the evidence.

(3) Because of newly discovered evidence.

(4) Because the Trial Court committed the following errors of law in connection with the overruling of the motion filed by the Defendant, Adams, in connection with the admission of certain evidence at the trial of this case:

(a) The Trial Court committed errors of law in refusing to grant the Defendant's Motion to Dismiss because of the insufficience of the indictment and for the reason that conspiracy to violate the lottery laws is a crime unknown to the Maryland law.

(b) Because the Trial Court admitted evidence in this case showing certain overt acts which were relied upon by the State to prove the conspiracy charge which were barred by the Statute of Limitations, with particular reference to the Testimony of R. Maurice Jones.

(c) It was also error of law to admit in evidence portions of the transcript of the testimony of William Adams taken before the Senate Sub-Committee investigating crime in interstate commerce by authority of Senate Resolution 202 taken under date of July 2, 1951, for the reason that there was no showing that the testimony of William Adams before the Sub-Committee above referred to was voluntary in character, and further for the reason that the State could not use this evidence in the trial of this criminal case because of the immunity given by Section 3486 of Title 18 of the United States Code Annotated, and for the further reason that the admission of this evidence was in derogation of the rights of Adams under the Fifth Amendment of the Constitution of the United States and Article 22 of the Declaration of Rights of the State of Maryland, and for the further reason that in admitting such evidence, the trial Court was compelling the Defendant, William Adams, in this case to give evidence against himself.

[fol. 91] (4) And for other reasons to be assigned upon the hearing of this motion.

(Signed) Joseph H. A. Rogan, J. Francis Ford, Attorneys for Defendant, William Adams.

IN THE SUPREME BENCH OF BALTIMORE CITY

PETITION—Filed July 11, 1952

To the Honorable, the Judges of the Supreme Bench of Baltimore City:

The Petition of William Adams by Joseph H. A. Rogan and J. Francis Ford, his attorneys, respectfully represents:

(1) That heretofore, to wit: on the 26th day of May, 1952, your Petitioner was convicted of conspiracy to violate the lottery laws before the Honorable E. Paul Mason, presiding Judge in the Criminal Court of Baltimore City.

(2) That at the trial of this case, there appeared as a witness for the State, R. Maurice Jones, who testified that on November 1, 1947, he received a telephone call from William Adams advising him to get in touch with one Milton Foster about entering the lottery business; that the said R. Maurice Jones further testified that he entered the business with Milton Foster and continued in the same until March 20, 1948, when he quit, at which time he went to the real estate offices of the said William Adams at 1519 Pennsylvania Avenue, where he threw some "Books" on Adams' desk; that the said R. Maurice Jones further testified that during the time he was in the said Business with the said Milton Foster, that the moneys received from the said lottery business were placed in a safe at the office of the Adams Realty Company at 1519 Pennsylvania Avenue, Baltimore.

(3) That your Petitioner is reliably informed and therefore avers that at about 11:30 a. m. on the morning of May [fol. 92] 27, 1952, one of his attorneys, J. Francis Ford received a telephone call from R. Maurice Jones; that during the conversation which resulted between the said R. Maurice Jones and J. Francis Ford, the said R. Maurice Jones advised the said J. Francis Ford that he desired to come to the office of the said J. Francis Ford to make a deposition and affidavit to the effect that he had lied about the aforementioned telephone call; that he lied about taking the books to the office of the said Adams Realty Company, all of which is set forth in an affidavit by the said J. Francis Ford, attached hereto, and marked "Petitioner's Exhibit No. 1", and prayed to be taken as a part hereof.

(4) That your Petitioner is reliably informed and therefore avers that at approximately 1:20 p. m. on the same day, the said R. Maurice Jones called Joseph H. A. Rogan, one of the attorneys for your Petitioner and engaged him in a telephone conversation at the said attorney's office; that during the course of the said telephone conversation, the said R. Maurice Jones stated that he wanted to come to the said Joseph H. A. Rogan's office and make an affidavit as to some false testimony he had given in the case of Adams on the day before, the said Maurice Jones stating to the said Joseph H. A. Rogan that he had not received the telephone call from Mr. Adams, as he had testified to; that Adams

had not put him, Jones, in the lottery business, and further that his testimony was false concerning the taking of any books to the office of Adams. The said Maurice Jones further stated that he had put money in the safe of Adams, but that Adams never knew anything about it. The substance of the aforegoing telephone conversation being set forth in an affidavit by Joseph H. A. Rogan, one of the attorneys for your Petitioner, attached hereto, and marked "Petitioner's Exhibit No. 2", and prayed to be taken as part hereof.

(5) That the original call at about 11:30 a. m. to the offices of the said attorneys Joseph H. A. Rogan and J. Francis Ford has been received by Miss Margaret L. Cauble, Secretary in the offices of Joseph H. A. Rogan and J. Francis [fol. 93] Ford, and the incidents of that conversation are set forth in an affidavit by the said Margaret L. Cauble, attached hereto and marked "Petitioner's Exhibit No. 3", and prayed to be taken as a part hereof.

(6) That your Petitioner alleges that he was convicted upon false testimony as shown by the attached affidavits; that your Petitioner has filed a Motion for a New Trial before the Supreme Bench of Baltimore City.

Wherefore, your Petitioner prays that an Order be passed allowing your Petitioner to file this Petition and Exhibits as part of the record in his case.

(Signed) Joseph H. A. Rogan, J. Francis Ford,
Attorneys for Petitioner, William Adams.

(Signed) William Adams, Petitioner.

(Affidavit attached.)

IN THE SUPREME BENCH OF BALTIMORE CITY

ORDER—July 11, 1952

Upon the aforegoing Petition and Affidavit, it is this 11th day of July, 1952, by the Supreme Bench of Baltimore City, Ordered, that this Petition and Exhibits be included in the record of the case entitled State of Maryland v. William Adams, now pending in the Criminal Court of Baltimore City as part of the record filed in connection with the

Motion for a New Trial, unless cause to the contrary be shown on or before the 1st day of September, 1952, provided a copy of the Petition and Exhibits be served upon Anselm Sodaro, State's Attorney for Baltimore City on or before the 15th day of July, 1952.

(Signed) Joseph L. Carter, Judge, Supreme Bench of Baltimore City.

[fol. 94] PETITIONER'S EXHIBIT NO. 1 TO PETITION

STATE OF MARYLAND,
City of Baltimore:

This is to certify that on this 28th day of May, 1952, before me, a Notary Public in and for the City of Baltimore, State of Maryland, personally appeared J. Francis Ford, a member of the Baltimore Bar, who made oath in due form of law to the following facts:

That at approximately 11:30 a. m., on the morning of May 27, 1952, he received a telephone call at his office 1607 Munsey Building, Baltimore, Maryland; that the caller identified hmself as Maurice Jones, a witness whom Mr. Ford had heard testify the previous day in the Criminal Court of Baltimore City in the trial of the case of the State of Maryland v. William Adams; that Maurice Jones asked the said J. Francis Ford whether he would be in his office for a little while, and J. Francis Ford advised Maurice Jones that he would; that -he said Maurice Jones then stated to the said J. Francis Ford that he desired to come to his office and make a "deposition and affidavit" to the effect that he had lied in his testimony in the aforementioned case which was tried before Judge E. Paul Mason, one of the Judges of the Supreme Bench of Baltimore City, in that his testimony was false in the following respects.

That Jones had lied when he testified that he had received a telephone call from William Adams suggesting that Jones contact one Milton Foster about going into the lottery business, and that he had further lied when he testified he had placed certain books on Adams' desk in Adams' office at 1519 Pennsylvania on the 20th of March, 1948; that the said J. Francis Ford then advised the said Maurice Jones

that he felt that Mr. Rogan should personally handle this matter; that the said J. Francis Ford further advised the said Maurice Jones that Mr. Rogan was not in his office at that time, but that the said Joseph H. A. Rogan would be in his office a little later, and Ford requested the said Maurice Jones to advise Ford where he could be reached [fol. 95] when Mr. Rogan arrived at his office. Maurice Jones then advised Ford that he was going to be in and out and could not be reached by telephone; that Ford then advised Jones that Mr. Rogan would probably be in his office at 1:30, and again asked Jones where Mr. Rogan could contact him at that time. Jones then advised Ford that he would call Mr. Rogan at 1:30; that shortly after that, -he said J. Francis Ford was able to contact the said Joseph H. A. Rogan and advise him of the telephone call he had received from Maurice Jones and the statements Jones made; that the said J. Francis Ford then accompanied the said Joseph H. A. Rogan to the Criminal Court of Baltimore City, where Judge E. Paul Mason was presiding; that the said Joseph H. A. Rogan and J. Francis Ford approached the bench with the permission of the Court and called to the bench Mr. William H. Maynard, Deputy State's Attorney of Baltimore City and Mr. William C. Rogers, Jr., Assistant State's Attorney, both of whom had participated in the trial of the Adams case the day previous before the Honorable E. Paul Mason; that the said Joseph H. A. Rogan then asked the said J. Francis Ford to relate to the Court the substance of the telephone call which he had received at approximately 11:30 a. m.; that the said Joseph H. A. Rogan then advised Judge Mason that he did not propose to take any deposition and affidavit from this witness and suggested to the Court that he and Ford were reporting this matter to the Court as officers of the Court for whatever appropriate action was deemed necessary on the part of the Court and the State's Attorney. Judge Mason then suggested to the said Joseph H. A. Rogan and J. Francis Ford that if Jones called back at 1:30, the said Joseph H. A. Rogan was to instruct Jones to come into Court and to state from the witness stand any retraction he had to make as far as his testimony of the previous day was concerned.

That at approximately 1:20 p. m., May 27, 1952, the said J. Francis Ford answered a telephone call which came to his office on telephone line Le. 7244, and the caller again [fol. 96] identified himself as Maurice Jones; that Ford definitely and positively identified the caller as being Maurice Jones, the witness who had testified on behalf of the State in the trial of the case of the State of Maryland v. William Adams in the Criminal Court of Baltimore City on May 26, 1952, before Judge E. Paul Mason; that Joseph H. A. Rogan was then in the office of J. Francis Ford; that Ford advised Maurice Jones that Mr. Rogan was present, and Ford immediately turned the telephone over to Mr. Rogan; that Mr. Rogan talked with Jones, and Ford heard Mr. Rogan advise Jones that he would not take his affiadvit, that he would not see him, if he came over to his office, and stated that if Jones had given false testimony, he should in good conscience immediately report the matter to Judge Mason, and further suggested to Jones that he present himself before Judge E. Paul Mason that afternoon (May 27, 1952).

(Signed) Margaret L. Cauble, Notary Public.

PETITIONER'S EXHIBIT NO. 2 TO PETITION

STATE OF MARYLAND,
City of Baltimore:

This is to certify that on this 28th day of May, 1952, before me, a Notary Public in and for the City of Baltimore, State of Maryland, personally appeared Joseph H. A. Rogan, member of the Baltimore Bar, and made oath in due form of law to the following facts:

That on Tuesday, May 27, 1952, at approximately noon time, the said Joseph H. A. Rogan was advised by his associate, J. Francis Ford that the said J. Francis Ford had received a telephone call at approximately 11:30 a. m. from R. Maurice Jones, a witness who had testified in the case of the State of Maryland v. William Adams in the Criminal Court of Baltimore on Monday, May 26, 1952; that the said J. Francis Ford related to the said Joseph H. A. Rogan the substance of the telephone call, particulars of which are set

forth in an affidavit made by the said J. Francis Ford and [fol. 97] filed herewith. That upon being advised of the substance of the said telephone call, the said Joseph H. A. Rogan accompanied by J. Francis Ford, went to the Criminal Court of Baltimore City where Judge E. Paul Mason was presiding, and where the said Joseph H. A. Rogan instructed the said J. Francis Ford to relate to the Court the substance of the telephone conversation he had had with R. Maurice Jones previously; that following this conversation with the Court, the said Joseph H. A. Rogan advised the Court that he would not take the deposition and affidavit of this State's Witness and stated that he and Mr. Ford were reporting this matter to the Court as officers of the Court. Judge Mason suggested to the said Joseph H. A. Rogan that if Jones called back at 1:30 p. m. Mr. Rogan should advise Jones to come into Court, take the witness stand and make any retraction he had to make in open Court; that at this meeting with Judge Mason, there were present in addition to the said J. Francis Ford, William H. Maynard, Deputy State's Attorney of Baltmore City and William C. Rogers, Jr., one of the assistant State's Attorneys. Following this meeting with Judge Mason, the said Joseph H. A. Rogan and J. Francis Ford returned to their offices.

That upon his return to his office, Joseph H. A. Rogan, while conferring with his associate, J. Francis Ford, in Mr. Ford's office, the telephone rang, and Mr. Ford answered it. Mr. Ford said, "Hello, Mr. Jones", and Mr. Ford further stated Mr. Rogan is here, and handed the receiver of the phone to Mr. Rogan. The Party calling was R. Maurice Jones, whose voice was recognized by Mr. Rogan, and Mr. Jones stated that he wanted to come over to his office and make an affidavit as to some false testimony he had given in the case of Adams. Joseph H. A. Rogan asked Mr. Jones the nature of this false testimony, and he said that he had not received the telephone call from Mr. Adams, and that Adams had not put him Jones, in the lottery business, and further said that his testimony was false concerning the taking of books to the office of Adams. [fol. 98] He, Jones, said he did put money in the safe, but Adams never knew anything about it. At that point, Mr. Rogan advised Jones that he would not take from him an

affidavit concerning the falsity of his testimony, and that if he desired to do so, he should see Judge Mason and report the matter direct to the Court.

Mr. Rogan further advised that if Jones would designate a time to appear before Judge Mason and would advise him, that he, Mr. Rogan, would like to be present. Jones then stated that he would go over the following morning because he wanted time to "meditate" the matter. He further stated that if Mr. Rogan would not prepare the affidavit concerning his testimony, he would consult some other person about its preparation. That on Wednesday, May 28, the said Joseph H. A. Rogan accompanied by Anselm Sodaro, State's Attorney for Baltimore City, met with Judge E. Paul Mason in his chambers, where the said Joseph H. A. Rogan advised the Court of the telephone conversation he had with Jones at 1:20 p.m. on the previous afternoon; that in accordance with the instructions of the Court, the said Joseph H. A. Rogan had suggested to Jones that he go before the Court and make whatever statement he desired.

(Signed) Margaret L. Cauble, Notary Public

PETITIONER'S EXHIBIT NO. 3 TO PETITION

STATE OF MARYLAND,
City of Baltimore:

This is to Certify that on this 11th day of July, 1952, before me a Notary Public in and for the City of Baltimore, State of Maryland, personally appeared Margaret L. Cauble, and made oath in due form of law to the following facts:

That approximately at 11:30 a.m., on Tuesday, May 27, 1952, I Margaret L. Cauble, being the Secretary in the law offices of Joseph H. A. Rogan and J. Francis Ford received [fol. 99] a telephone call; that the individual calling asked for Mr. Rogan, and I advised him that the said Mr. Rogan was not in his office at that moment, and I asked the caller if Mr. Rogan could call him; the caller then identified himself to me as Maurice Jones; when he advised who he was, I advised him that Mr. J. Francis Ford was in the office, and

asked Mr. Jones if he desired to talk with Mr. Ford, Mr. Jones said he would talk with Mr. Ford, and I accordingly rang the buzzer in Mr. Ford's office. Mr. Ford then talked with Mr. Jones. Mr. Ford's office is immediately adjacent to mine, the door in his office was open, and I heard Mr. Ford tell Maurice Jones that he had better wait until Mr. Rogan came in.

Witness my hand and Notarial Seal.

(Signed) Frances Bach, Notary Public.

IN THE SUPREME BENCH OF BALTIMORE CITY

MOTION NE RECIPIATUR

To the Honorable, the Judges of the Supreme Bench of Baltimore City:

The State of Maryland, by Anselm Sodaro, State's Attorney for the City of Baltimore, in answer to the petition of William Adams filed July 11th, 1952, asking that certain affidavits attached to said petition be filed with the Supreme Bench of Baltimore City and be made a part of the record for a motion for new trial, be not received for the reason that said affidavits are based upon suspicion and conjecture, whereas in truth and in fact the said R. Maurice Jones did not at any time telephone or otherwise communicate with Joseph H. A. Rogan, J. Francis Ford nor with Miss Margaret L. Cauble, secretary in the offices of Joseph H. A. Rogan and J. Francis Ford, and that the testimony of R. Maurice Jones at the trial of William Adams on May 26th, 1952, is true and correct, all of which appears in the affidavit of R. Maurice Jones attached hereto and made a part hereof.

[fol. 100] Having fully answered the petition of the said William Adams, the State moves that the petition and the affidavits attached thereto be not received.

(Signed) Anselm Sodaro, State's Attorney for the City of Baltimore.

AFFIDAVIT

STATE OF MARYLAND,
City of Baltimore, to wit:

I hereby certify that on this 17th day of July, 1952, personally appeared before me, a Notary Public of the State of Maryland, in and for the City of Baltimore aforesaid, R. Maurice Jones, who made oath in due form of law as follows:

That he was a witness in the trial of William Adams on May 26th, 1952; that he did not on May 27th, 1952, nor prior thereto nor subsequent thereto nor at any other time telephone Joseph H. A. Rogan nor J. Francis Ford, nor Miss Margaret L. Cauble, secretary in the offices of Joseph H. A. Rogan and J. Francis Ford; the said R. Maurice Jones further deposes that he did not in any manner whatsoever at any time communicate with the said Joseph H. A. Rogan or J. Francis Ford, or Miss Margaret L. Cauble, secretary in the offices of Joseph H. A. Rogan and J. Francis Ford; that the testimony which he gave in the William Adams case as aforesaid is a matter of record and is true and correct.

As witness the signature of the said R. Maurice Jones.

(Signed) R. Maurice Jones

Subscribed and sworn to this 17th day of July, 1952.
(Signed) Elizabeth Brooks Cipra, Notary Public.

[fol. 106] THE COURT OF APPEALS OF MARYLAND, OCTOBER TERM, 1952

No. 147

WILLIAM ADAMS

v.

STATE OF MARYLAND

Judge DELAPLAINE delivered the Opinion of the Court:

This is the appeal of William Adams from his conviction by the Criminal Court of Baltimore on an indictment charging that he and Walter Rouse, of Baltimore, on August 1, 1947, and thence continually until August 15, 1951, unlawfully conspired together, and with certain other persons to the jurors unknown, to violate the lottery laws of the State of Maryland. The Court, acting upon the motion of Rouse, ordered a severance. Adams was then tried by the Court sitting without a jury. He was found guilty and was sentenced to the Maryland Penitentiary for a term of seven years and to pay a fine of $2,000.

It appears that the State failed to produce any evidence that appellant had conspired with anyone by the name of Rouse, but showed that appellant had conspired with Reuben Maurice Jones and other persons. Jones, the chief witness for the State, was one of the participants in a numbers business conducted on Calhoun Street from November, 1947, until March, 1948. He testified that on November 1, 1947, appellant phoned him that if he would call to see Milton Foster, he could get a job in that business that would pay him a commission of 25 per cent of the profits. Jones called at Foster's home on November 2 and started to work on November 3. He kept the accounts of eight men who [fol. 107] were "getting the numbers business out in the street," and after each day's work he took the money to his home. Whenever he accumulated about a thousand dollars, he would take it to the Adams Realty Company on Pennsylvania Avenue, where appellant had his private office. He testified that at one time the pile of cash in the safe at the Adams Realty Company amounted to $29,000. However,

on March 20, 1948, according to his testimony, he quitted the business. He recalled that he walked into appellant's private office, threw the books on the table and said to him:

"I am through with this job. There is not any future in it whatsoever."

Jones further testified that one day in October, 1949, while playing golf in Carroll Park, he was talking with appellant about the gambling business. He testified: "I was kidding him about numbers 500 and 501 hit just before Labor Day." He further testified that appellant told him that he could get a job in a new numbers business, whereupon he replied:

"I feel that numbers you are paying too much, 7 to 1. • • • I felt it should have been 6 to 1, if he was going to operate. In that way you would have more plush on margin on which to sustain those big numbers when you hit like 500 or 501."

Jones finally testified that in June, 1950, he attended two meetings held in the office of the Adams Realty Company to consider starting a new numbers business. At those meetings he declared that he would not work in any numbers business unless it paid him a commission of 25 per cent of the profits and the numbers paid only 6 to 1, as "that was the only way anybody in Baltimore is going to really make money out of the numbers business."

The clear inference can be drawn from these conversations between appellant and Jones that appellant was still in the numbers business as late as June, 1950.

One of the early rules of the common law was that the name of a person necessary for complete description of a crime should be stated in the indictment, if the name of such person is known. The obvious reason for this rule is that [fol. 108] every person indicted for a crime is entitled to be informed of the nature of the charge as precisely as possible to enable him to properly prepare his defense. State v. Rappise, N. J., 65 A. 2d 266. However, in order to prevent a failure of justice, it is now generally accepted that, if the name of a person necessary for complete description of a crime is unknown to the grand jurors, they are justified in alleging that the name of such person is unknown to them.

It is preferable that an indictment for conspiracy should state the names of the co-conspirators. Laws 1945, ch. 87;

Hurwitz v. State, Md., 92 A. 2d 575, 579. It frequently happens, however, as the Court said in Rosenthal v. United States, 8 Cir., 45 F. 2d 1000, 1003, that an indictment charges the defendant with a conspiracy with persons unknown, even though it is not contemplated that the unknown persons will ever be prosecuted.

Of course, in order to convict on an indictment charging a conspiracy, the evidence must establish the conspiracy charged and not some other conspiracy. Dowdy v. United States, 4 Cir., 46 F. 2d 417; Lefco v. United States, 3 Cir., 74 F. 2d 66. But where an indictment alleges that two defendants conspired with other persons to the grand jury unknown, one of the defendants may be convicted, even though the other was not a party to the conspiracy, if the proof shows that some other person unknown to the grand jury was a party to it. Worthington v. United States, 7 Cir., 64 F. 2d 936, 939.

In the case at bar the chief witness, Reuben Maurice Jones, was known to the grand jurors, because he appeared as one of the witnesses before them. Nevertheless, his testimony showed that appellant conspired to violate the lottery laws not only with him but also with other persons who were presumably unknown to the grand jurors.

Appellant contended that the prosecution was barred by the Statute of Limitations. Prosecution for the crime of conspiracy must be commenced in Maryland within two years after the commission of the offense. Code 1951, art. [fol. 109] 27, sec. 46; Scarlett v. State, Md., 93 A. 2d 753. The indictment in this case was filed on August 24, 1951. Appellant argues that Jones got out of the numbers business on Calhoun Street in March, 1948, and that his testimony as to his conversation with appellant in October, 1949, and as to the meetings held in the office of the Adams Realty Company in June, 1950, to consider starting a new numbers business was not substantial enough to prove that he conspired to violate the lottery laws after March, 1948.

If there were any doubt on this contention, it was removed by the introduction in evidence of the testimony that appellant gave before the United States Senate Crime Investigating Committee in Washington. He testified before that Committee that he did not give up the numbers busi-

ness until May, 1950. He admitted that he had about ten men who brought in the money, and that he had a bookkeeper who assisted him with the records.

Appellant strongly objected to the introduction of the confession which he made before the Senate Committee. He argued that since he was subpoenaed to appear before that Committee, and since he could have been charged with a misdemeanor if he failed to appear, his confession was given under compulsion.

The Bill of Rights, which applies only to the Federal Government, contains guaranties against oppressive proceedings in criminal prosecutions. The Fifth Amendment contains the Anglo-American concept of justice that no person shall be compelled in any criminal case to be a witness against himself. Likewise, Article 22 of the Maryland Declaration of Rights declares: "That no man ought to be compelled to give evidence against himself in a criminal case."

In Henze v. State, 154 Md. 332, 347, 140 A. 218, the Court of Appeals held that the right of an accused person not to be compelled to give evidence against himself, as guaranteed by the Maryland Declaration of Rights, is not violated by the introduction in evidence of a confession which he voluntarily gave at a former trial for the same offense. The admissibility of testimony given at a former trial depends upon whether or not it was voluntary. To be admis- [fol. 110] sible it must be voluntary, and where there is no evidence to the contrary it will be presumed that the testimony was voluntary.

Appellant cited the Act of Congress providing that every person who, having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House or any committee of either House, wilfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, is guilty of a misdemeanor. 2 U. S. C. A. sec. 192.

Appellant also relied on the Act of Congress which provides that no testimony given by a witness before either House, or before any Committee of either House, or before any Joint Committee shall be used as evidence in any crimi-

nal proceeding against him in any Court, except in a prosecution for perjury committed in giving such testimony. 18 U. S. C. A. sec. 3486.

However, we accept the decision, as announced by the Court of Appeals of the District of Columbia in May v. United States, 175 F. 2d 994, 1000, 1001, certiorari denied, 338 U. S. 830, 70 S. Ct. 58, 94 L. Ed. 505, that in the absence of a refusal to answer followed by compulsion to answer, no immunity from prosecution arising out of the subject matter of testimony inures to the benefit of a witness before Congress either (1) under the Fifth Amendment of the Federal Constitution, or (2) under the statute penalizing failure to testify before Congress, or (3) under the statute providing that no testimony given before Congress shall be used as evidence in any criminal proceeding.

In explaining that decision Justice Prettyman, speaking for the Court, said:

> "The Fifth Amendment deals with compulsion to testify against oneself. Experience long ago demonstrated that public authorities must at times, in the public interest, obtain information which might incriminate the informant. They may compel that testimony. But they cannot violate, qualify or limit the Constitu- [fol. 111] tion. Therefore, when they compel testimony, they cannot use it against the informant. The Constitution is rigid in this respect.
>
> "But not all testimony given public authorities is compelled. Some is given voluntarily, and some, even though not volunteered, is supplied without objection. The Constitution says nothing about such testimony. It does not provide that what a man says voluntarily may not be used against him. So a statute which deals generally with the use of testimony falls partly within and partly without the scope of the Amendment. In so far as it relates to the use of involuntary testimony, it cannot impinge upon the prohibition of the Amendment. In so far as it relates to the use of other testimony, it is outside the scope of the Amendment and unaffected by it. The Constitution does not require that a statute dealing generally, but exclusively, with

the use of testimony be construed to prevent prosecution upon the subject matter of the testimony."

In this case appellant had testified before the Senate Committee without any claim of immunity from self-incrimination. We understand that he refused to answer one question, not material here, and one of the Senators made the comment that the Committee did not have the power to compel an answer to that question. But the testimony of appellant which was introduced in the Court below was given before the Committee voluntarily. The constitutional privilege against the giving of incriminating testimony must be asserted before an immunity is established. To be liable to the penalties of the statute requiring testimony before Congress, a witness must be asked a question and he must refuse to answer. As the Senate Committee did not compel appellant to testify, no immunity arose. Consequently his testimony was admissible in evidence at his trial. The Court did not do him any injustice by admitting statements which he himself gave voluntarily under the sanctity of an oath.

[fol. 112] Under our rules, the verdict of the court sitting without a jury must not be set aside on the evidence unless clearly erroneous. General Rules of Practice and Procedure, part 4, rule 7(c); Edwards v. State, Md., 81 A. 2d 631, 639; Kaufman v. State, Md., 85 A. 2d 446; Anello v. State, Md., 93 A. 2d 71. Viewing the entire record, we find that the verdict of the Court was not clearly erroneous. The judgment thereon will therefore be affirmed.

Judgment Affirmed, with costs.

Filed: June 10, 1953.

[fol. 113] Copy of Docket Entries

COURT OF APPEALS OF MARYLAND, OCTOBER TERM, 1952

No. 147

WILLIAM ADAMS

vs.

STATE OF MARYLAND

Appeal from the Criminal Court of Baltimore

Filed: February 11, 1953

June 10, 1953, Judgment Affirmed, with Costs

Opinion Filed. Op. Delaplaine, J.

June 22, 1953, Petition for Stay of Mandate Filed Pending Decision of U. S. S. C. on Writ of Certiorari

Appellant's Cost in the Court of Appeals of Maryland,

Clerk's Cost	$ 10.00	
Brief	$571.46	
Appearance Fee	$ 10.00	
		$591.46

Appellee's Cost in the Court of Appeals of Maryland,

Brief	$147.50		
Appearance Fee	$ 10.00		
		157.50	$748.96

STATE OF MARYLAND, Set:

I, Maurice Ogle, Clerk of the Court of Appeals of Maryland, do hereby certify that the foregoing is truly taken from the record and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Appeals, this twenty-eighth day of July A. D. 1953.

Maurice Ogle, Clerk of the Court of Appeals of Maryland. (Seal.)

[fol. 114] Clerk's Certificate to foregoing transcript omitted in printing.

BLEED THROUGH- POOR COPY

[fol. 109] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1953

No. 271

WILLIAM ADAMS, Petitioner,

vs.

STATE OF MARYLAND

ORDER ALLOWING CERTIORARI—Filed October 26, 1953

The petition herein for a writ of certiorari to the Court of Appeals of the State of Maryland is granted, limited to question Number 1 presented by the petition for the writ.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(1690)

No. 271

IN THE

Supreme Court of the United States

October Term, 1952

WILLIAM ADAMS, *Petitioner*

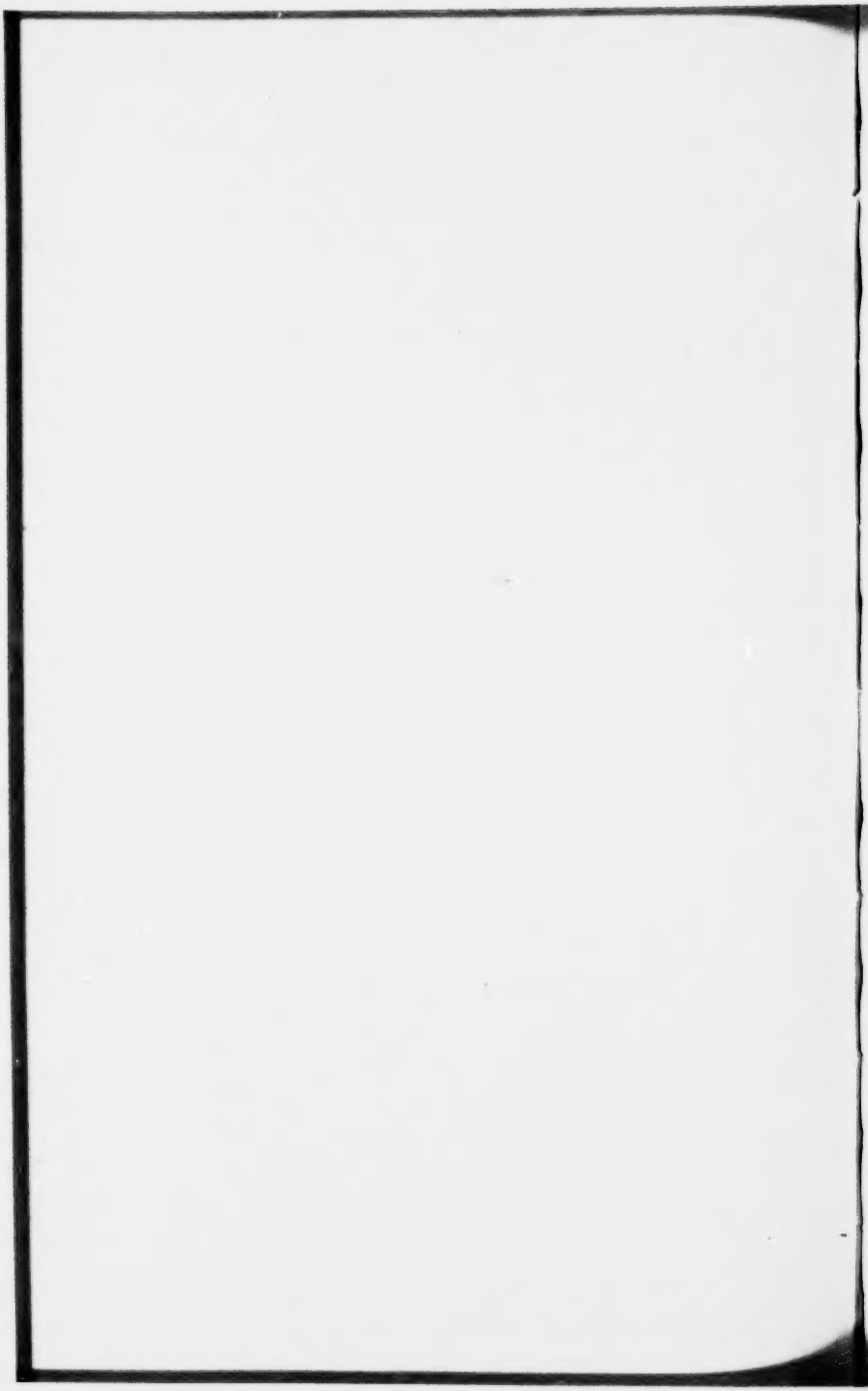
v.

STATE OF MARYLAND, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND AND BRIEF

JAMES A. COBB,
GEORGE E. C. HAYES,
JOSEPH H. A. ROGAN,
J. FRANCIS FORD,
Counsel for Petitioner.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.



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IN THE

Supreme Court of the United States

October Term, 1952

WILLIAM ADAMS, *Petitioner*

v.

STATE OF MARYLAND, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND AND BRIEF

William Adams, petitioner herein, prays that a Writ of Certiorari issue to review the judgment of the Court of Appeals of the State of Maryland, entered on the 10th day of June, 1953.

OPINIONS BELOW

The opinion of Judge Mason, the presiding Judge in the Trial Court, the Criminal Court of Baltimore City, is herewith set out:

> "(The Court) I have listened very carefully to the testimony in this case, and I think if I believe the testimony of Jones there is enough in it to find a basis that the defendant was in the lottery business at the time Jones said he was there.
>
> "I have mentioned before one or two things, and one of them was the use of the safe for the keeping of the proceeds of the lottery business. There isn't

any doubt in my mind from what Jones says, as well as from what the bookkeeper said, that Jones was around that place, and around there quite a good deal. She put it that he was in some connection with a store business, but he says he wasn't there with the Village Store Business. Jones said he was there in this lottery business, and that he ran it from November up until the following March or May I think it was he said.

"(Mr. Maynard) March 20th.

"(The Court) March 20th of '48. I believe he was there in the lottery business. I believe he was runing it for Adams. I don't know any reason why he would have access to that safe at all if it wasn't to put money in or take money out. That is what safes are for, that is what they are kept for.

"When we get around to the defendant, and the greatest trouble I have frankly with the case is on the question of limitations, when I get around to the testimony of the defendant in the statements that he made before the O'Conor Committee I think he brings himself squarely within the limitations when he puts himself up to 1950 as the time he was in the lottery business. We don't hear of any other lottery business that he was in except this business which Jones says he was in, and which he left full-fledged and running as a lottery business. When Jones left it, when he walked in there and threw his papers down in front of Adams, the business wasn't wound up or anything of the kind. It was then a full-fledged lottery business employing about eight people. Jones quit, he didn't wind it up or anything of the kind, and I think with Adams saying that he continued in that business until 1950 there is every indication that it was the business that Jones was running in 1948 and no other business.

"I find there is a kind of corroboration in this talk about the new operation in 1950.

"I find Adams guilty on the 1st count of the indictment."

The opinion of the Court of Appeals of Maryland, Judge Delaplaine, Jr., is herewith set out:

"This is the appeal of William Adams from his conviction by the Criminal Court of Baltimore on an indictment charging that he and Walter Rouse, of Baltimore, on August 1, 1947, and thence continually until August 15, 1951, unlawfully conspired together, and with certain other persons to the jurors unknown to violate the lottery laws of the State of Maryland. The Court, acting upon the motion of Rouse, ordered a severance. Adams was then tried by the Court sitting without a jury. He was found guilty and was sentenced to the Maryland Penitentiary for a term of seven years and to pay a fine of $2,000.

"It appears that the State failed to produce any evidence that appellant had conspired with anyone by the name of Rouse, but showed that appellant had conspired with Reuben Maurice Jones and other persons. Jones, the chief witness for the State, was one of the participants in a numbers business conducted on Calhoun Street from November, 1947, until March, 1948. He testified that on November 1, 1947, appellant phoned him that if he would call to see Milton Foster, he could get a job in that business that would pay him a commission of 25 per cent of the profits. Jones called at Foster's home on November 2 and started to work on November 3. He kept the accounts of eight men who were 'getting the number business out in the street,' and after each day's work he took the money to his home. Whenever he accumulated about a thousand dollars, he would take it to the Adams Realty Company on Pennsylvania Avenue, where appellant had his private office. He testified that at one time the pile of cash in the safe at the Adams Realty Company amounted to $29,000. However, on March 20, 1948, according to his testimony, he quitted the business. He recalled that he walked into appellant's private office, threw the books on the table and said to him: 'I am through with this job. There is not any future in it whatsoever.'

"Jones further testified that one day in October, 1949, while playing golf in Carroll Park, he was talk-

ing with appellant about the gambling business. He testified: 'I was kidding him about numbers 500 and 501 hit just before Labor Day.' He further testified that appellant told him that he could get a job in a new numbers business, whereupon he replied: 'I feel that numbers you are paying too much, 7 to 1. * * * I felt it would have been 6 to 1, if he was going to operate. In that way you would have more plush or margin on which to sustain those big numbers when you hit like 500 or 501.'

"Jones finally testified that in June, 1950, he attended two meetings held in the office of the Adams Realty Company to consider starting a new numbers business. At those meetings he declared that he would not work in any numbers business unless it paid him a commission of 25 per cent of the profits and the numbers paid only 6 to 1, as 'That was the only way anybody in Baltimore is going to really make money out of the numbers business.'

"The clear inference can be drawn from these conversations between appellant and Jones that appellant was still in the numbers business as late as June, 1950.

"One of the early rules of the common law was that the name of a person necessary for complete description of a crime should be stated in the indictment, if the name of such person is known. The obvious reason for this rule is that every person indicted for a crime is entitled to be informed of the nature of the charge as precisely as possible to enable him to properly prepare his defense. State v. Rappise, N.J. 65 A. 2d 266. However, in order to prevent a failure of justice, it is now generally accepted that, if the name of a person, necessary for complete description of a crime is unknown to the grand jurors, they are justified in alleging that the name of such person is unknown to them.

"It is preferable that an indictment for conspiracy should state the names of the co-conspirators. Laws 1945, ch. 87; Hurwitz v. State, Md., 92 A. 2d 575, 579. It frequently happens however, as the Court said in Rosenthal v. United States, 8 Cir. 45 F 2d 1000, 1003, that an indictment charges the defendant with a conspiracy with persons unknown even if it is not con-

templated that the unknown persons will ever be prosecuted.

"Of course, in order to convict on an indictment charging a conspiracy, the evidence must establish the conspiracy charged and not some other conspiracy. Dowdy v. United States, 4 Cir., 46 F. 2d 417; Lefco v. United States, 3 Cir., 74 F. 2d 66. But where an indictment alleges that two defendants conspired with other persons to the grand jury unknown, one of the defendants may be convicted, even though the other was not a party to the conspiracy, if the proof shows that some other person unknown to the grand jury was a party to it. Worthington v. United States, 7 Cir., 64 F. 2d 936, 939.

"In the case at bar the chief witness, Reuben Maurice Jones, was known to the grand jurors, because he appeared as one of the witnesses before them. Nevertheless, his testimony showed that appellant conspired to violate the lottery laws not only with him but also with other persons who were presumably unknown to the grand jurors.

"Appellant contended that the prosecution was barred by the Statute of Limitations. Prosecution for the crime of conspiracy must be commenced in Maryland within two years after the commission of the offense, Code 1951, Art. 27, sec. 46; Scarlett v. State, Md., 93A. 2d 753. The indictment in this case was filed on August 24, 1951. Appellant argues that Jones got out of the numbers business on Calhoun Street in March, 1948, and that his testimony as to his conversation with appellant in October, 1949, and as to the meetings held in the office of the Adams Realty Company in June, 1950, to consider starting a new numbers business was not substantial enough to prove that he conspired to violate the lottery laws after March, 1948.

"If there were any doubt on this contention, it was removed by the introduction in evidence of the testimony that appellant gave before the United States Crime Investigating Committee in Washington. He testified before that Committee that he did not give up the numbers business until May, 1950. He admitted that he had about ten men who brought in the

money, and that he had a bookkeeper who assisted him with the records.

"Appellant strongly objected to the introduction of the confession which he made before the Senate Committee. He argued that since he was subpoenaed to appear before that Committee, and since he could have been charged with a misdemeanor if he failed to appear, his confession was given under compulsion.

"The Bill of Rights, which applied only to the Federal Government, contains guaranties against oppressive proceedings in criminal prosecutions. The Fifth Amendment contains the Anglo-American concept of justice that no person shall be compelled in any criminal case to be a witness against himself. Likewise, Article 22 of the Maryland Declaration of Rights declares: 'That no man ought to be compelled to give evidence against himself in a criminal case.'

"In Henze v. State, 154 Md. 332, 347, 140 A. 218, the Court of Appeals held that the right of an accused person not to be compelled to give evidence against himself, as guaranteed by the Maryland Declaration of Rights, is not violated by the introduction in evidence of a confession which he voluntarily gave at a former trial for the same offense. The admissibility of testimony given at a former trial depends upon whether or not it was voluntary. To be admissible it must be voluntary, and where there is no evidence to the contrary it will be presumed that the testimony was voluntary.

"Appellant cited the Act of Congress providing that every person who, having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House or any committee of either House, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, is guilty of a misdemeanor. 2 U.S.C.A., sec. 192.

"Appellant also relied on the Act of Congress which provides that no testimony given by a witness before either House, or before any Committee of either House, or before any Joint Committee should be used as evidence in any criminal proceeding against him in

any Court, except in a prosecution for perjury committed in giving such testimony. 18 U.S.C.A., sec. 3486.

"However, we accept the decision, as announced by the Court of Appeals of the District of Columbia in May v. United States, 175 F. 2d 994, 1000, 1001, certiorari denied, 388 U.S. 830, 70 S. Ct. 58, 94 L. Ed. 505, that in the absence of a refusal to answer followed by compulsion to answer, no immunity from prosecution arising out of the subject matter of testimony inures to the benefit of a witness before Congress either (1) under the Fifth Amendment of the Federal Constitution, or (2) under the statute penalizing failure to testify before Congress, or (3) under the statute providing that no testimony given before Congress shall be used as evidence in any criminal proceeding.

"In explaining that decision, Justice Prettyman, speaking for the Court said:

'The Fifth Amendment deals with compulsion to testify against oneself. Experience long demonstrated that public authorities must at time, in the public interest, obtain information which might incriminate the informant. They may compel that testimony. But they cannot violate, qualify or limit the Constitution. Therefore, when they compel testimony, they cannot use it against the informant. The Constitution is rigid in this respect.

'But not all testimony given public authorities is compelled. Some is given voluntarily, and some, even though not volunteered, is supplied without objection. The Constitution says nothing about such testimony. It does not provide that what a man says voluntarily may not be used against him. So a statute which deals generally with the use of testimony falls partly within and partly without the scope of the Amendment. In so far as it relates to the use of involuntary testimony, it cannot impinge upon the prohibition of the amendment. In so far as it relates to the use of other testimony, it is outside the scope of the Amendment and unaffected by it. The constitution does not require that a statute dealing generally, but exclusively, with the

use of testimony be construed to prevent prosecution upon the subject matter of the testimony.'

"In this case appellant had testified before the Senate Committee without any claim of immunity from self-incrimination. We understand that he refused to answer one question, not material here, and one of the Senators made the comment that the Committee did not have the power to compel an answer to that question. But the testimony of appellant which was introduced in the Court below was given before the Committee voluntarily. The constitutional privilege against the giving of incriminating testimony must be asserted before an immunity is established. To be liable to the penalties of the statute requiring testimony before Congress, a witness must be asked a question and he must refuse to answer. As the Senate Committee did not compel appellant to testify, no immunity arose. Consequently his testimony was admissible in evidence at his trial. The Court did not do him any injustice by admitting statements which he himself gave voluntarily under the sanctity of an oath.

"Under our rules, the verdict of the court sitting without a jury must not be set aside on the evidence unless clearly erroneous. General Rules of Practice and Procedure, part 4, rule 7 (c); Edwards v. State, 81 A. 2d 631, 639; Kaufman v. State, Md., 85 A. 2d 446; Anello v. State, Md., 93 A. 2d 71. Viewing the entire record, we find the verdict of the Court was not clearly erroneous.

"The Judgment thereon will therefore be affirmed."

JURISDICTION

The opinion and judgment of the Court of Appeals of Maryland affirming the conviction of the petitioner in the Trial Court of Baltimore City was entered on the 10th day of June, 1953. The jurisdiction of this Court is invoked under Title 28, U.S.C.A., Section 1257 (3). Petitioner by written motion for appropriate relief in the Criminal Court of Baltimore City prior to his trial objected to the admission in evidence of the transcript of his testimony

taken before the Senate Crime Investigating Committee in Washington, D.C. under date of June 2, 1951. (R. pp. 21-23). Oral objection was also made at the trial of this case to the admission of this testimony, and an appropriate oral motion was made to strike it from the record. Both the oral objection and oral motion were overruled by the Trial Court and the testimony was admitted in evidence. (R. pp. 79-80). Petitioner in thus objecting relied on Section 3486 of Title 18, U.S.C.A. The petitioner was found guilty by Judge E. Paul Mason, presiding in the Criminal Court of Baltimore City on May 29, 1952. (R. pp. 88-89). The objection to the admission of the above testimony was renewed in the Motion for a New Trial heard by the Supreme Bench of Baltimore City which motion was overruled by the Supreme Bench of Baltimore City on November 26, 1952. Petitioner cited as error the failure of the Trial Court to exclude the evidence in accordance with the provisions of Section 3486, but the Court of Appeals of Maryland in its opinion did not pass on the question whether or not the evidence was admissible despite Section 3486, but contented itself by saying that petitioner had testified before the Senate Crime Investigating Committee voluntarily, and that the evidence was admissible under the decision of *May* v. *United States,* 175 F. 2d 994. Petitioner obtained a stay of the Mandate of the Court of Appeals of Maryland for a period of sixty days pending the perfection of his application for a Writ of Certiorari in this Court. (R. p. 107).

STATEMENT OF CASE

On July 2, 1951, the petitioner was summoned to testify before the Special Committee to Investigate Organized Crime in Interstate Commerce, United States Senate. He was also served with a subpoena duces tecum calling upon him to produce certain books and records at the time he testified.

In response to both subpoenas, the petitioner appeared and answered several questions propounded by the Counsel for the Committee.

On August 15, 1951, the Grand Jury in and for the City of Baltimore, State of Maryland, presented the petitioner and Walter Rouse, and charged them with conspiracy together and with other persons to the jurors unknown, to violate the lottery laws of the State of Maryland. On August 24, 1951, an indictment was returned against them, charging them with the identical crime charged in the presentment. A trial before Judge Sherbow and a jury on December 20, 1951 resulted in a verdict of "guilty" as to each; but thereafter and on to wit February 4, 1952, the Supreme Bench of Baltimore City granted both the petitioner and Walter Rouse a new trial.

Prior to the second trial, the instant case, a motion to exclude the testimony taken before the Senate Crime Investigating Committee was renewed, same having been made in the first trial, but was overruled by the trial court on May 21, 1952. On the same day, May 21, 1952, Walter Rouse filed a motion for severance which was granted by the trial judge.

On May 26, 1952, the petitioner went on trial before Judge E. Paul Mason sitting as a Jury where during the trial of the case, the oral objection to the introduction of the testimony of the petitioner before the Senate Crime Investigating Committee was renewed and overruled. (R. pp. 30-31). At the conclusion of the trial, Judge Mason found a verdict of "guilty." (R. pp. 88-89). A motion for a new trial was filed with the Supreme Bench of Baltimore City, alleging that the verdict was contrary to the evidence and the weight of the evidence, that the indictment was insufficient and set forth a crime unknown to the Maryland law and should have been dismissed; that evidence was admitted of certain overt acts barred by the Statute of Limitations; that portions of the transcript of testimony of William Adams taken before the Senate In-

vestigating Committee were erroneously admitted in evidence; and because of newly discovered evidence (R. pp. 89-90). The newly discovered evidence outlined in the petition to the Supreme Bench of Baltimore City was to the effect that the sole witness upon whose testimony the prosecution had relied, R. Maurice Jones, had called the office of counsel for the defendant Adams and made the statement that he had lied in the case as to material testimony against the defendant Adams and desired to make a "deposition and affidavit" in the Office of counsel to that effect. This conversation was corroborated by affidavits of Attorneys Rogan and Ford and by a Margaret L. Cauble, Secretary in the law offices of Attorney Rogan and Ford. (R. pp. 94-99). A motion ne recipiatur was filed by the State and supported by the affidavit of R. Maurice Jones to the effect that he had not made the calls asserted to by the three aforementioned affidavits. The Supreme Bench of Baltimore City, without comment or reference to any of the grounds upon which reliance was had, on, to wit, November 26, 1952, overruled the Motion for a New Trial. (R. p. 5).

Sentence of seven years in the Maryland Penitentiary and a $2,000 fine was imposed on petitioner, William Adams, by Judge Mason, on December 2, 1952. (R. p. 89).

An appeal was noted to the Court of Appeals of Maryland on December 2, 1952, where the judgment of the lower court was affirmed by opinion filed June 10, 1953.

The only evidence introduced at the trial of this case by the state as against the petitioner was the testimony of the witness Reuben Maurice Jones, the testimony of the petitioner before the Senate Crime Investigating Committee, and the testimony of Captain Alexander Emerson, member of the Police Department of Baltimore City and head of the vice squad. Captain Emerson's testimony had no probative value as far as the proof in this case was concerned, he, being called as an expert for the purpose of explaining the meaning of the term "lay off." Reuben

Maurice Jones testified that he and a man named Milton Foster along with a number of others were engaged in a lottery operation at an address on Calhoun Street in Baltimore from November 3, 1947 to March 20, 1948. The State sought to connect the petitioner herein with the Calhoun Street operation by testimony from the witness Jones, as to a telephone call he testified as to having received from the petitioner on Saturday, November 1, 1947; testimony from Jones as to placing profits from the operation in petitioner's safe at 1519 Pennsylvania Avenue, Baltimore, and by two subsequent conversations, one in petitioner's office and one on a golf course.

According to the State's brief filed in the Court of Appeals of Maryland, the predicate for the prosecution in this case was the petitioner's testimony before the Senate Investigating Committee and the testimony of the witness Jones furnished the necessary corroboration. Thus it will be seen the vital importance of the question of the admissibility of petitioner's testimony before the Senate Crime Investigating Committee since without this the State would not have had sufficient evidence with which to convict the petitioner, accepting the State's theory of the case. Under the Maryland Law, a defendant in a conspiracy case cannot be convicted on the uncorroborated testimony of an accomplice alone. *Lanasa* v. *State,* 109 Md. 602, *Wolf* v. *State,* 143 Md. 489. In this case, there is no corroboration of the witness Jones' testimony who, under the State's theory, was an accomplice.

The facts as they were developed by the evidence in this case, as they pertain to the petitioner, are these:

One Reuben Maurice Jones testified that on November 1, 1947, he received a telephone call from someone who identified himself as Willie Adams and advised him (Jones) to get in touch with one Milton Foster and to operate with him (Foster) a lottery business from which he (Jones) was to get 25% of the winnings. (R. p. 33). Thereafter Jones and Foster conducted a lottery operation at a

residence in the Three Hundred Block of North Calhoun Street, Baltimore, Md. He (Jones) controlled the operation and took out from same in the nature of charges for his necessities between $2,500 and $3,000, taking out of such monies as came in sometimes $75.00 a week and sometimes as much as $150.00. (R. p. 34). He invested no money in the operation and did not know who put up the actual operating capital. (R. p. 34). The money taken in daily was first taken by Jones to his home and when the sum reached the amount of $1,000.00 or more, he would take it to an office which had the name on the window of Adams Realty Company and a young lady there named Miss Arrington would open a safe in the office for him and he deposited the money there; the peak amount in said safe having been $29,000.00 in cash. (R. p. 36). Jones continued in this business from November 3, 1947 to March 20, 1948. (R. p. 36). On March 20, 1948, Jones found Mr. Adams sitting in a private office adjoining the office of the Adams Realty Company, threw some books which he had on the desk, announced that he was through and walked out. (R. p. 38). Thereafter in September or October, 1949, Jones saw Adams on the Carroll Park Golf Course and joked with him about lottery numbers 500 and 501 which had hit just before Labor Day. At that time, he (Jones) said in a general conversation between four persons walking along the golf course for about 225 yards that numbers were paying too much, seven to one, and that Jones would be interested if they could be set up at six to one. (R. p. 40). Jones further testified that in about June, 1950, he participated in two meetings in the Adams Realty Company Office at 1519 Pennsylvania Avenue at which time he (Jones) again broached the subject of a lottery enterprise paying six to one and of him getting 25% of the profits in conversation with Mr. Adams, but the proposition did not materialize. (R. p. 41). Under cross-examination, Jones testified that he had appeared before the Senate Crime Committee as a matter of vengeance for

what he considered was an advantage taken of him in a bona fide business transaction. (R. p. 50). That he had no personal knowledge of Adams being in the numbers business and that from November, 1947, until March, 1948, he never saw Adams. (R. pp. 52-53). That he had no arrangement with Adams regarding putting money in the safe. (R. p. 53). That Adams told him if he could work out a plan, regarding the financing of the venture, he was suggesting that he would have to get someone else to put up the money. (R. p. 55). That Adams never came to the Three Hundred Block of Calhoun Street where he was operating and that he never discussed the business with Adams and never made any accounting to him, and that from November, 1947, until June, 1950, he could not specifically place Adams in the numbers business, that he did not know who put up the money and that he never had to raise money outside of what he had in the safe. (R. p. 56).

Over the objection of counsel for the defense, there was read into the record testimony of one Alfred F. Goldstein, identified as a stenotype verbatim reporter, as given at a previous trial and as being substituted for the original notes of Mr. Goldstein, which had been lost, reporting an executive session of July 2, 1951 of the Special Committee to Investigate Organized Crime in Interstate Commerce, U. S. Senate, Senator O'Conor, Chairman; and the testimony of Williams Adams as taken by Mr. Goldstein, before that Committee, accompanied by counsel, J. Francis Ford and Joseph Rogan. (R. pp. 65-72). From this recorded testimony of Mr. Adams, given to the Senate Committee in executive session, before which he had been subpoenaed, there was read into the record testimony to the effect that he had been engaged in the numbers business in Baltimore, Maryland, up until, to wit, May, 1950; explaining his participating in the operation and an average daily take-in of $1,000.00 with a limit of $1.00 to persons playing and in the event of a number of persons playing with him, say eight, having a dollar on the same number, he would

lay off, say $4.00 with someone else, but he could not remember the names of any such persons. (R. pp. 72-73).

Captain Alexander L. Emerson was called as an expert and testified to the effect that he had been connected with the Baltimore Police Department for over thirty years and with the vice-squad for almost 12 years and explained that the word "lay-off" as used by Adams meant when one backer in lottery play got too much "action," he would call it in to another backer. (R. p. 77). Motions made to strike out the testimony of Maurice Jones and the testimony of Mr. Goldstein and for a directed verdict were denied by the Court. On behalf of defendant Adams, a witness, Cecelia McNeal, nee Arrington, was offered and testified that she was an employee of the Adams Realty Company or William Adams, at 1519 Pennsylvania Avenue, from December 16, 1940 to August 9, 1948 as secretary-bookkeeper and outlined her duties as such. She stated that there was no private office but that the one office of the company was within the same four walls and that her desk was directly across from Mr. Adams' desk. That there was a safe in the office with a combination known only to Mr. Adams and herself; that Maurice Jones had no arrangement with her about access to the safe; that he neither gave her money to put into the safe nor could he take out any; and that the highest amount she had known to be in the safe was $1,500 representing receipts for a weekend at the night club, the handling of which was a part of her duties or perhaps a property settlement which was usually in the form of a check. She testified further that she often saw Maurice Jones at her office as his books as proprietor or manager of Village Stores, Inc., were kept there, which business was prior to 1947 but possibly carried over to 1947. (R. pp. 80-82). This is a complete substantial recital of all the testimony adduced. Defense motion for a directed finding was renewed and overruled.

It is our position that these facts are entirely insufficient to support a conviction for a conspiracy allegedly carried on between Adams, Rouse and persons unknown to the Grand Jury, it being remembered in this connection that Judge Delaplaine expressly found that Jones was known to the Grand Jury. It is further to be noted that in Judge Delaplaine's opinion, the Judge states that witness Jones testified that "appellant told him that he could get a job in a new numbers business * * *." It is respectfully submitted that a perusal of the testimony shows no such statement as having been made by Jones and the language in the record will reveal that nothing there justified the drawing of any such inference. Indeed much to the contrary Jones specifically testified that he could not affirmatively state that Adams was engaged in the numbers business. Thus such an affirmance of a groundless conviction amounted to the denial to Adams of the due process of law assured to him by the Fourteenth Amendment to the Constitution. To prosecute defendant under an indictment improperly drafted, with a designed withholding of the name of his alleged co-conspirator so as not to apprise him of the offense with which he was actually charged, more effectually robbed Adams of due process than not to have given him a trial at all. To this lack of due process was added the allowance of the introduction of testimony taken before the Senate Sub-Committee, contrary to the Statute granting immunity and/or providing that testimony given to such Committee could not be used against the person giving it in any other Court. It is also to be noted that the Trial Judge expressed concern as to the question of limitations and apparently satisfies himself that the statutory prohibition as to the conspiracy charged between Adams and Rouse as known conspirators was tolled by the reference made by Jones to a lottery business with him and testimony of Adams bringing his activities in the lottery business up to 1950, without any reference to a co-conspirator and in fact negativing any alleged re-

lationship with either the named co-conspirator of Jones, whose testimony was accepted in proof of the conspiracy charged. As before indicated, it is our position that considering all the factors and evidence adduced, that same were not only insufficient to support a conviction, but amounted to a denial to the defendant of due process of law, guaranteed under the Fourteenth Amendment. The question with respect to the limitation period has been established in the Maryland jurisdiction in the case of *Archer* v. *State*, 145 Md. 128:

> "We are clearly of the opinion that Sec. 11 of Article 57 means *now* just what it meant before the passage of the Acts of 1916 and 1918, and that the prosecution of persons charged with conspiracies or other misdemeanors not 'placed along with felonies' by the grades of punishment fixed for them by the common law or by statute, must be begun within one year from the date of the conspiracy."

QUESTIONS PRESENTED

I. Whether U.S.C.A., Title 18, Section 3486, reading as follows:

> "No testimony given by a witness before either House, or before any Committee of either House, or **before any Joint Committee established by a joint or** concurrent resolution of the two Houses of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury in giving such testimony, but an official paper or record produced by him is not within the said privilege."

renders inadmissible testimony given by Adams before a Senate Committee in a criminal case in the Maryland Courts and in turn avoids a conviction which has to rely upon the testimony thus admitted?

II. Whether the conviction of Adams was a denial of his rights under the due process of law clause of the Four-

teenth Amendment of the Constitution of the United States, in that:

a. Said conviction was in violation of Article 22 of the Maryland Declaration of Rights in the language "that no man ought to be compelled to give evidence against himself in a criminal case".
b. Said conviction was based upon an indictment outlining a purported offense which was no offense under the Maryland Law.
c. Said conviction was based upon testimony contrary to and non-supportive of the offense of which the petitioner was charged.
d. The conviction of the petitioner was based upon testimony of alleged overt acts barred by the Statute of Limitations.
e. The opinion of the Court demonstrated that his reliance was upon inferences from the testimony with no basis therefor; upon improper interpretations of the applicable law and citations made; and upon a case, *May* v. *United States*, 175 F. 2d 994, 1000, 1001, certiorari denied, 338 U.S. 830, 70 S. Ct. 58, 94 L. Ed. 505, which is clearly distinguishable as to fundamental facts and which offers no sound legal basis for the conclusion reached by the Court.

SPECIFICATIONS OF ERROR TO BE URGED

The Court of Appeals of Maryland erred:

(1) In denying to the petitioner the rights granted him by Section 3486, Title 18, U.S.C.A., by approving the introduction in evidence of his testimony before the Senate Crime Investigating Committee, and thereby denying the supremacy of an Act of Congress in violation of Article 6 of the Constitution of the United States.

(2) In affirming the judgment and sentence of the Criminal Court of Baltimore City in so far as same were violative of the rights of the petitioner under the due process clause of the Fourteenth Amendment.

STATUTES INVOLVED

The pertinent statutory provisions are printed in the Appendix pp. 37-40.

REASONS FOR GRANTING THIS WRIT

1. The Court of Appeals of Maryland clearly takes the position that in the instant case the rights of the petitioner as guaranteed by Article 22 of the Maryland Declaration of Rights in the language "that no man ought to be compelled to give evidence against himself in a criminal case" were not violated by allowing in evidence over the objection of counsel testimony given by the petitioner in a hearing before the Senate Crime Investigating Committee on the ground that the testimony of the petitioner before that Committee was voluntary. The record in this case shows that the petitioner was duly summoned by the Senate Crime Investigating Committee to appear before it and to testify as to what he knew relative to such matters under consideration by the said Committee. The summons is set out in the appendix. In response to this summons, Adams appeared and testified to certain matters and facts which were under investigation by the Committee. Subsequently, he was indicted by the Grand Jurors of the City of Baltimore and charged with conspiracy to violate the lottery laws of the State of Maryland. At the trial of his case, the stenographic notes of petitioner's testimony taken before the Senate Investigating Committee were read at the trial in the Criminal Court of Baltimore City and this evidence, together with the evidence of one other witness, resulted in his conviction for conspiracy to violate the lottery laws. Objection to the introduction of this evidence was made by written motion, as well as by oral objection at the trial of the case. The objection was renewed at the argument on the motion for a new trial before the Supreme Bench of Baltimore City and again in the argument on appeal in the Court of Appeals of Maryland. Neither the Criminal Court of Baltimore City, the Supreme Bench of

Baltimore City, nor the Court of Appeals of Maryland saw fit to support the objection made to the introduction of this testimony, despite the statutory mandate of the Congress of the United States, and in complete disregard of petitioner's rights under Section 3486 of Title 18, U.S.C.A., which provides as follows:

> "No testimony given by a witness before either House or before any committee of either House, or before any joint committee established by a joint or concurrent resolution of the two Houses of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committee in giving such testimony. But an official paper or record produced by him is not within the said privilege. June 25, 1948, 62 Stat. 833."

In its opinion the Court of Appeals of Maryland in addressing itself to this question, placed complete reliance on the case of *May* v. *United States*, 175 F. 2d 994, where it was argued that the appellant, May, enjoyed immunity from prosecution. The marked distinction between the two cases can be unquestionably demonstrated. This petitioner, under subpoena and under the stress of being charged with a misdemeanor should he have refused to testify (Section 192, Title 2, U.S.C.A.) and answered questions propounded to him by counsel for the Committee. Ex-Congressman May, at his own instance, without summons, volunteered what he presumably considered as exculpatory statements, and in the trial of the case, through counsel, made same the text of a press release. The procedure in that case we herewith incorporate by the following reference to the trial record in that case:

> "Mr. Paisley: Here is a release to the press. It is styled 'House of Representatives, Committee on Affairs, Washington, D. C. Andrew J. May, 7th District Kentucky. Release, afternoon papers, Sept. 5, 1946, Warren E. Magee & Dan J. Anderson, Attys. at Law, Munsey Bldg., Washington, D.C.'

> "Attached to that press release is a copy of a letter Mr. May wrote to the Chairman of the Meade Committee and 'Statement of Honorable A. J. May before the Senate Special Committee to investigate the National Defense Program, July 26, 1946,' and attached to that is what purports to be an accounting of the funds he received from Cumberland Lumber Co. * * *
> "Mr. Paisley: In fact, we would like the whole thing identified as Government Exhibit 172.
> "(The press release and attached document recorded in evidence as Government Exhibit 172.)"

This testimony was offered during cross-examination by the Government without objection from the defendant. The contrast of circumstances in the instant case is apparent.

It is further to be noted that in that case the appellate court at page 1000 of the Record stated: "The problem before us is whether these appellants were entirely immune from prosecution. *We are not now discussing the admissibility of evidence.*" (Emphasis supplied). In the instant case the admissibility of the evidence is the primary issue.

Thus, relying on the decision in the case of *May* v. *United States,* the Court of Appeals of Maryland erred in affirming the decision of the Criminal Court of Baltimore City, since the Court in the May case did not pass upon the questions involved in the instant case. Article 6, Clause 2 of the Constitution of the United States provides:

> "This Constitution and the laws of the United States shall be made in pursuance thereof. * * * shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding."

The statute in question (Section 3486, Title 18, U.S.C.A.) is plain in its meaning. The language is perfectly clear, and it contains no reference to any suggestion that the

witness must claim immunity before answering any question. The statute says:

> "No testimony given by a witness * * * shall be used as evidence in any criminal proceeding against him in any Court."

The question then arises as to whether or not Maryland must observe the statutory mandate of Congress. The Petitioner claims that the Maryland Courts must observe the provisions of the statute, and that he has certain rights as a result of this statute. As early as *Claflin* v. *Houseman,* 93 U.S. 130, this Court declared the doctrine as far as a statute of the United States was concerned, and the doctrine of *Claflin* v. *Houseman* has been reaffirmed and reapplied in the case of *Testa* v. *Katt,* 330 U.S. 396. More in point as far as the current question is the case of *Brown* v. *Walker,* 161 U.S. 591. In *Brown* v. *Walker,* the Petitioner and Appellant, Brown, who was an auditor for the Alleghany Valley Railway Company, and he had been subpoenaed as a witness before the Grand Jury at a term of the district court of the second district of Pennsylvania to testify as to a charge then under investigation by that body against certain officers and agents of the railway company for alleged violation of the Interstate Commerce Act. Certain questions were addressed to him which he refused to answer for the reason that his answer would tend to accuse and incriminate him. Brown was held in contempt. In that case, this court has before it for consideration the act of Congress of February 11, 1893, 27th Statute at large, 443, which provided that:

> "No person shall be excused from attending and testifying or from producing books, papers, tariffs, contracts, agreements and documents before the Interstate Commerce Commission, or in obedience of the Commission. * * * on the ground and for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to criminate him or subject him to a penalty or forfeiture. But no person

shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before said Commission, or in obedience to its subpoena, or either of them, or in such case or proceeding."

The argument was made in that case before this Court that while the witness was granted immunity from prosecution from the Federal government, he did not obtain such immunity against prosecution in the State courts. Mr. Justice Brown, in writing the opinion in that case stated with regard to this contention, "We are unable to appreciate the force of this suggestion. It is true that the Constitution does not operate upon a witness testifying in the State Courts, since we held that the first eight amendments are limitations only upon the powers of Congress and the Federal courts, and are not applicable to the several States except so far as the 14th Amendment may have made them applicable."

"There is no such restriction, however, upon the applicability of Federal Statutes. The 6th article of the Constitution declares that, 'this Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.' The Court in that case relied upon the case of *Steward* v. *Bloom*, 78 U.S. 11, Wall 493, where the question was whether a debt contracted by a citizen in New Orleans prior to the breaking out of the rebellion was subject in a State court to the statute of limitations passed by Congress June 11, 1864, declaring that as to actions which should accrue during the existence of the rebellion, against persons who could not be served with process by reason of the war, the time when such persons were beyond the reach of judicial process should not be taken or deemed

to be any part of the time limited by law for the commencement of such actions. The court held unanimously that the debt was subject to this act, and in delivering the opinion of the court, Mr. Justice Swayne said: "

> "But it has been insisted that the Act of 1864 was intended to be administered only in the Federal courts, and that it has no application to cases pending in the courts of the states. The language is general. There is nothing in it which requires or will warrant so narrow a construction. It lays down a rule as to the subject, and has no reference to the tribunals by which it is to be applied. A different interpretation would defeat, to a large extent, the object of its enactment * * * . The judicial anomaly would be presented of one rule of property in the Federal courts and another and a different one in the courts of the State, and debts could be recovered in the former which would be barred in the latter."

Speaking of the question involved in the case of *Brown* v. *Walker*, Mr. Justice Brown continued:

> "The act in question contains no suggestion that it is to be applied only to the Federal Courts. It declares broadly that 'no person shall be excused from attending and testifying * * * before the Interstate Commerce Commission * * * on the ground * * * that the testimony * * * required of him may tend to criminate him, etc. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify,' etc. It is not that he shall not be prosecuted for or on account of any crime concerning which he may testify, which might possibly be urged to apply only to crimes under the Federal law and not to crimes, such as the passing of counterfeited money, etc., which are also cognizable under state laws; but the immunity extends to any transaction, matter, or thing concerning which he may testify, which clearly indicated that the immunity is intended to be general and to be applicable whenever and in whatever court such prosecution may be had."

The doctrine of supremacy as announced in the case of *Brown* v. *Walker* has never been overruled by any subsequent decision of this court, and it would seem therefore in the instant case, that the courts of Maryland were obliged to give full effect to the plain meaning and intent of Section 3486 of Title 18, U.S.C.A., and to exclude from the evidence in this case the testimony of the Petitioner before the Senate Crime Investigating Committee. It should be pointed out that in the instant case, the Congressional Committee was investigating the effect that organized crime had on interstate commerce, and if in a situation where the Congress has seen fit to act and to require testimony of witnesses, that the Congress would have the right to say what could or could not be done with the testimony it had taken. A similar provision of the law is found in the bankruptcy law, where in Section 25 of Title 11 of U.S.C.A. it sets out the duties of the bankrupt, included among which is the duty of the bankrupt to submit to an examination concerning the conduct of his business, the cause of his loss, his dealings with creditors and other persons, the amount, kind, and whereabouts of his property, and in addition, all matters which may effect the administration and settlement of his estate, "*but no testimony given by him shall be offered in evidence against him in any criminal proceeding.*" This statute has been before various State courts where the evidence has been held inadmissible.

Blum v. *State,* 94 Md. 375
Daniels v. *State,* 57 Fla. 1
People v. *Lay,* 193 Mich. 476
See also *People* v. *Donnenfeld,* 198 App. Div. 918, 135 N. E. 903.

Section 3486, Title 18, U.S.C.A., the immunity statute under consideration, has been before at least one State Court and that is in the case of *Erickson* v. *Hogan,* 98 N.Y. Supp. 2nd 858, wherein, it was decided expressly that this statute is applicable to procedure in the State courts.

Aside, however, from the distinctions showing the lack of applicability of the May case to the instant case, the Court of Appeals of the District of Columbia in a case much more recently decided, to wit, July 2, 1953, under circumstances which come much nearer to paralleling the instant case, has in a majority opinion, with Judge Prettyman dissenting, who wrote the May opinion, exploded the theory of voluntariness relied on by Judge Delaplaine in the instant case. This case was *Charles E. Nelson, Appellant* v. *United States of America, Appellee,* No. 11,353, decided July 2, 1953. Judge Bazelon, speaking for the Court, with Judge Edgerton concurring, used such significant and applicable language as the following:

> "Nelson's freedom of choice had been dissolved in a brooding omnipresence of compulsion. The Committee threatened prosecution for contempt if he refused to answer, for perjury if he lied, and for gambling activities if he told the truth * * *.
>
> "If there is anything to suggest that a congressional committee hearing is less awesome than a police station or a District Attorneys Office, and should therefore be viewed differently, it has escaped our notice. The similarity has become more apparent as the 'investigative' activities of Congress have become more distinguishable from the law enforcement activities of the Executive. We would have to be that 'blind' court, * * * that does not see what 'all others can see and understand' not to know that there is wide concern, both in and out of Congress, over some aspects of the exercise of the Congressional power of investigation".

The dissenting opinion of Judge Prettyman in this Nelson case does two things—(1) it shows that the question of the voluntariness of Nelson's testimony was squarely before the Court and that his was the minority view as to its interpretation; and (2) it clearly showed that his opinion in the instant case would have been that petitioners testimony should not have been admitted in evidence. We quote from a pertinent portion of his dissenting opinion:

"As to the Statute (Sec. 3486 of Title 18) I think it was error to admit the documents against Nelson. While they did not constitute testimony, they did constitute evidence given by Nelson while he was a witness before the Committee. But I do not think this error constituted reversible error. There was more than ample other evidence to establish Nelson's guilt; evidence of employees, participants in the numbers game, etc. Some twenty witnesses who said they were otherwise engaged in the numbers operation, testified. They all testified from personal knowledge. His guilt was unquestionably established beyond a reasonable doubt by evidence not connected with these records * * * "

In the instant case, there were not records or documents offered, but actual "testimony" as prohibited by the Act. In the instant case, there was absolutely no other testimony other than that of the petitioner of which the conviction could be predicated. Mindful of the Maryland Law that the conviction could not depend upon the uncorroborated testimony of an accomplice, reliance had to be had solely on this inadmissible testimony of the petitioner himself.

2. This Writ of Certiorari ought to be granted because the interpretation of the language of the Statute, Sec. 3486, 18 U.S.C.A. is being made more and more necessary by what is apparent in the language itself and by varying interpretations of the applicability to state courts. This point squarely met by the appellants brief in the Court of Appeals of Maryland and attempted to be answered by the appellees, is not decided nor commented on in Judge Delaplaine's opinion. This leaves unanswered in the instant case a question to which the rights of the petitioner demand an answer and which can only be fully answered by this tribunal, the Supreme Court of the United States. The answer given by this Court, without any repudiation, has been indicated by the citation of the case of *Brown* v. *Walker,* 16 U.S. 825, 40 L. Ed. 607, the applicability of which has been detailed. Decisions which contradict the conclusion arrived at in the instant case are exemplified in

the case of *Erickson* v. *Hogan*, 98 N.Y.S. (2) 858. In passing upon the question in a defendant's motion to dismiss the complaint for insufficiency, the Court suggested the proper remedy as being an inspection of the Grand Jury minutes so as to move to quash any indictment shown to be principally grounded "on the protected proof". In that case the Court also held Title 18, Section 3486, U.S.C.A. as being applicable to procedure in state courts and cited in support thereof: *Claflin* v. *Houseman*, 93 U.S. 130, 23 L. Ed. 833; *Brown* v. *Walker*, 161 U.S. 591, 40 L. Ed. 819; *Erickson* v. *Macy*, 231 N.Y. 86, 91-92, 131 N.E. 744; *People* v. *Elliott*, 123 Misc. 602, 206 N.Y.S. 54 and *People* v. *Downenfeld*, 198 App. Div. 918, 135 N. E. 903.

The question here involved, was recently decided differently from the determination of the Court in the instant case in the case of *U. S.* v. *DiCarlo*, 102 Fed. Supp. 599.[1] The language of the Court in that case is enlightening and we submit controlling:

> "The foregoing considerations lead inescapably to the conclusion that the defendant is entitled to immunity against disclosures that might incriminate him of violations of state law as well as immunity against self-incrimination of a federal crime. If this conclusion cannot be said to rest upon the principle of state supremacy in the domain of reserved powers, as hereinabove discussed, it finds ample support in the principle that the Fifth Amendment operates as a restraint upon federal officers investigating state crimes.
>
> "It does violence to the American concept of constitutional governments in a system of dual sovereignties to suppose that there is an area of overlapping federal jurisdiction in which the federal government is released from constitutional restraints upon governmental power.
>
> "The rule that the Fifth Amendment affords protection only against prosecutions of federal offenses was

[1] In this case defendant was charged in an indictment containing eight counts with violating Title 2, Sec. 192, U.S.C.A. in refusing to answer pertinent questions put to him as a witness before a sub-committee of a special committee of the United States Senate at Cleveland, Ohio, on January 19, 1951.

declared in the Murdock case. The language of the opinion in that case impliedly negatives the suggestion that the rule should be thus limited in its application in cases where a federal investigation involves 'inquiries to discover evidence of a state crime'. The Murdock case therefore presents no barrier to the extension of the immunity of the Fifth Amendment to witnesses in a Congressional investigation of state crime. United States v. Saline Bank, supra, supports the view that the immunity of the Fifth Amendment may be so extended. While no express reference is made to the Fifth Amendment in that case, the implication is unmistakable that the decision rests upon the authority of the immunity clause of that Amendment. The same is true of the statements of Mr. Justice Holmes in Ballmann v. Fagin, supra. *The fifth Amendment operates as a restraint upon federal officers and federal agencies investigating federal matters. No good reason appears why this restraint should be removed in a federally conducted investigation of state crime.*

"For the reasons assigned, I am of the opinion that the defendant as a witness was entitled to claim immunity against disclosures that might subject him to prosecution under either federal or state laws." (Emphasis supplied)

This Court should affirmatively determine the applicability of Section 3486, Title 18 to testimony attempted to be offered in state courts.

The State of Maryland has heretofore and will doubtless now rely upon the case of *Schwartz* v. *Texas,* 97 L. Ed. Adv. Sheets 157-160. The holding in that case does not conflict with the proposition urged by this petitioner and shown to be supported by applicable decisions of this Court. In the *Schwartz* v. *Texas* case, this court properly took the position that it would not require an interpretation of a Federal Statute as being controlling against a State where the highest state court in the jurisdiction involved and in various other states had uniformly placed a different interpretation upon statutes involving the same proposition.

This does not reach the question which the instant case poses and which as hereinbefore outlined has been squarely met and decided by this Court in *Brown* v. *Walker, supra.* Indeed the applicability of the language of a Federal statute to a State court has again and rather exhaustively been treated in the case of *Case* v. *Bowles,* 327 U.S. 92, 90 L. Ed. 559. The Court at page 558 said:

> "The Emergency Price Control Act grants to the Price Administrator broad powers to set maximum prices for commodities and rents and makes it unlawful for 'any person to violate these maximum price regulations. Section 302(h) 50 USCA Appx. Section 942 (h), defines a 'person' as including 'an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative of any of the foregoing, and includes the United States or any agency thereof, or any other government, or any of its political subdivisions, or any agency of any of the foregoing'. This language on its face, and given its ordinary meaning, would appear to be broad enough to include any person, natural or artificial, or any group or agency, public or private, which sells commodities or charges rents. The argument that the Act should not be construed so as to include a state within the enumerated list made subject to price regulation, rest largely on the premise that Congress does not ordinarily attempt to regulate state activities and that we should not infer such an intention in the absence of plain and unequivocal language. Petitioner presses this contention so far as to urge us to accept as a general principle that unless Congress actually uses the word 'state', courts should not construe regulatory enactments as applicable to the states. This Court has previously rejected similar arguments, Ohio v. Helvering, 292 U.S. 360, 78 L. Ed. 1307, U.S. v. California 297 U.S. 175, 80 L. Ed. 567, California v. United States, 320 U.S. 577, 88 L. Ed. 322 and we cannot accept such an argument now.
>
> We think it too plain, to call for extended discussion that Congress meant to include states and their political subdivisions, or any agency of any of the foregoing. Congress clearly intended to control all com-

modity prices and all rents with certain specific exceptions which it declared. It would frustrate this purpose for courts to read exemptions into the Act which Congress did not see fit to put in the language. Excessive prices for rents or commodities charged by a state or its agencies would produce exactly the same conditions as would be produced were these prices charged by other persons. We, therefore, having no doubt that Congress intended the Act to apply generally to sales of commodities by states."

Dallas v. *Bowles,* 153 F. 2d 464, at page 560:

"Since the decision in M'Culloch v. Maryland, 4 Wheat (U.S.) 316, 4 L. ed. 579, it has seldom if ever been doubted that Congress has power in order to attain a legitimate end—that is, to accomplish the full purpose of granted authority—to use all appropriate means plainly adapted to that end, unless inconsistent with other parts of the Constitution. And we have said, that the Tenth Amendment 'does not operate as a limitation upon the powers, express or implied delegated to the National Government.'

"Whereas here, Congress has enacted legislation authorized by its granted powers, and where at the same time, a state has a conflicting law which but for the Congressional Act would be valid, the Constitution marks the course for courts to follow. Article 6 provides that 'The Constitution and the laws of the United States . . . made in pursuance thereof shall be the supreme law of the land.'

Hines v. Davidowitz, 312 U.S. 52, 85 L. ed. 581.
James Stewart & Co. v. Sadrakula, 309 U.S. 94, 84 L. ed. 596".

3. The Writ of Certiorari should be granted because the entire record discloses a violation of the rights of the petitioner under the due process clause of the Fourteenth Amendment and this Court will re-examine the evidentiary basis upon which the conclusions of the lower court are founded. In the case of *Niemotko* v. *Maryland,* 340 U.S.

270, 95 L. Ed. 270, 95 Law Ed. 267, Chief Justice Vinson, delivering the opinion of the Court said:

> "In cases in which there is a claim of denial of rights under the Federal Constitution, this court is not bound by the conclusions of lower courts, but will reexamine the evidentiary basis on which those conclusions are founded. See Feiner v. New York, decided this day, 340 U.S. 315 post, 295, 71 Sup. Ct. 303, 328".

In the above cited Miemotko case, in a concurring opinion, referring to that case and to the kindred cases of *Kunz* v. *People of the State of New York,* 340 U.S. 290, 95 Law Ed. 280, and *Fainer* v. *People of the State of New York,* 340 U.S. 315, 95 Law Ed. 295, Mr. Justice Frankfurter emphasized the necessity of examining the evidence in the state courts where a denial of rights under the Federal Constitution was charged.

A re-examination of the instant case will disclose an improperly grounded indictment of an offense not cognizable under the Maryland law; admission in evidence of and conviction upon testimony clearly not admissible and not supportive of the indictment and itself barred by the Statute of Limitations; admission in evidence of testimony before a Senate Crime Investigating Committee, amounting to an involuntary confession, expressly prohibited by statute; and an affirming opinion of the Court based on groundless inferences and improperly interpreted citations, which individually amount to and collectively add up to a violation of petitioner's rights under the due process clause of the Fourteenth Amendment.

The position of this court as to one of the violations above referred to is expressed by Mr. Justice Douglas in the case of *Malinski* v. *New York,* 324 U.S. 404; 89 Law Ed. 1032:

> "But the question of whether there has been a violation of the due process clause of the Fourteenth Amendment by the introduction of an involuntary confession is one on which we must make an independent deter-

mination on the undisputed facts. Chambers v. Florida, 309 U.S. 227, 84 Law Ed. 716, 60 S. Ct. 472; Lisenba v. California, 314 U.S. 219, 86 Law Ed. 166, 62 S. Ct. 280, Ashcraft v. Tennessee, 322 U.S. 143, 88 Law Ed. 1192, 64 S. Ct. 921."

And in the same case, at the same page, Mr. Justice Douglas further said, referring to the use of involuntary confessions:

> "And if it is introduced at the trial, the judgment of conviction will be set aside even though the evidence apart from the confession might have been sufficient to sustain the jury's verdict. Lyons v. Oklahoma, 322 U.S. 596, 597, 88 Law Ed. 1481, 64 S. Ct. 1208."

The language of Mr. Justice Frankfurter in his concurring opinion in this case will emphasize the propriety of reviewing the decision in the instant case.

> " * * * Congress in proposing the Fourteenth Amendment and the States in ratifying it left to the States the freedom of action they had before that Amendment excepting only that after 1868 no State could 'abridge the privileges or immunities of citizens of the United States' nor 'deprive any person of life, liberty, or property, without due process of law,' nor deny to any person the 'equal protection of the laws'. These are all phrases of large generalities. But they are not generalities of unillumined vagueness; they are generalities circumscribed by history and appropriate to the largeness of the problems of government with which they were concerned * * * ".

In the instant case, it must be conceded that there was no evidence apart from the testimony before the Senate Crime Investigating Committee, which may be properly here referred to as an involuntary confession upon which the verdict could be based and all the more certiorari should be granted in order that the judgment of conviction may be set aside.

4. The Writ of Certiorari should be granted for the further reason that the Judicial Code, 28 U.S.C.A. paragraph 344 (b) impowers this Court to issue writs of certiorari to state courts in:

> "* * * any cause wherein a final judgment or decree has been rendered or passed by the highest court of a state in which a decision should be had where is drawn in question the validity of a treaty or statute of the United States; or where is drawn in question the validity of a statute of any State on the ground of it being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege or immunity is specifically set up or claimed by either party under the Constitution or any treaty or Statute of, or commission held or authority exercised under the United States; and the power to review under this paragraph may be exercised as well where the Federal Claim is sustained as where it is denied."

In keeping with the foregoing, this Court has promulgated rules under the terms of which grounds for the issuance of a Writ of Certiorari to a state court, among others, are *where the decision involves a matter or question intrinsically important; where a State Court has decided a Federal question of substance in a way not in accord with the applicable decisions of the Supreme Court of the United States; where the decision of the State Court affects the scope of prior rulings of the Supreme Court;* or *where it is claimed that the decision involves an infringement of some provision of the Federal Constitution such as the clause relating to full faith and* credit, the obligation of contract, *due process* or equal protection of the law.

Aside from the reasons theretofore given, the issues involved in the interpretation of the so-called "immunity" statute here in question are of nationwide intrinsic importance and are currently being made the matter of interpretation in various jurisdictions and of proposed Congressional legislation. There is presently pending before the Congress—Senate 16, introduced by Senator McCar-

ran, accompanied by Report 153 submitted by Deputy Attorney General William P. Rogers, which is "A Bill—To Amend the immunity provision relating to testimony given by witnesses before either House of Congress or their Committees."

The proposed bill by express language does not indicate the applicability of the immunity to state courts and whereas reliance is had by some upon the interpretation of similar statutes as affording the applicability to states, it seems generally conceded that final determination will have to be made by this Court. The granting of certiorari in this case will allow of such a decision as the issue was clearly raised in the Court below as to the admissibility of the testimony before the sub-committee in the face of the Statute—Sec. 3486, Title 18, U.S.C.A.

The opinions of eminent constitutional authorities have been solicited—Honorable Philip B. Pearlman, Former Solicitor General of the United States; Hon. Francis Biddle, former U. S. Attorney General; Hon. John W. Davis, internationally recognized constitutional attorney. The over all suggestion seems to be that a final solution will doubtless have to await further action by this Court as opinions vary as to this proposed legislation and its applicability to state courts. In an enlightening and significant article under date of July 12, 1953, the Baltimore Sunday Sun carried an article captioned "Witness—Immunity Bill seen certain to get Court Test," and this article sets forth various and varying opinions of proponents of the new proposed legislation and of outstanding constitutional scholars. These facts and circumstances point out the propriety of this Court granting certiorari in the instant case in order that this question may be set at rest and the individual constitutional rights of this petitioner properly adjudicated.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Petition for Certiorari, to bring before this Court the decision and judgment of the Court of Appeals of Maryland, should be granted.

JAMES A. COBB,
GEORGE E. C. HAYES,
JOSEPH H. A. ROGAN,
J. FRANCIS FORD,
Counsel for Petitioner.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1953

WILLIAM ADAMS, *Petitioner,*

v.

STATE OF MARYLAND, *Respondent*

Appendix

The 81st Congress, Second Session, passed Senate Resolution 202, which resolution provides as follows:

> Resolved, That a special committee composed of five members, two of whom shall be members of the minority party, to be appointed by the President of the Senate from the Committee on Interstate and Foreign Commerce of the Senate and the Committee on the Judiciary of the Senate, is authorized and directed to make a full and complete study and investigation of whether organized crime utilizes the facilities of interstate commerce or otherwise operates in interstate commerce in furtherance of any transactions which are in violation of the law of the United States or of the State in which the transactions occur, and, if so, the manner and extent to which, and the identity of the persons, firms, or corporations by which such utilization is being made, what facilities are being used, and whether or not organized crime utilizes such interstate facilities or otherwise operates in interstate commerce for the development of corrupting influences in violating of law of the United States or of the laws of any State: Provided, however, That nothing contained herein shall (1) authorize the recommendation of any change in the laws of the several States relative to gambling, (2) effect any change in the laws of any State relative to gambling, or (3) effect any possible interference with the rights of the several States to prohibit, legalize, or in any way regulate gambling within their borders. For the purposes

of this resolution, the term "State" includes the District of Columbia or any Territory or possession of the United States.

Sec. 2. The committee shall select a chairman from among its members. Vacancies in the membership of the committee shall not affect the power of the remaining members to execute the power of the remaining members to execute the functions of the committee, and shall be filled in the same manner as the original selection. A majority of the members of the committee, or any subcommittee thereof, shall constitute a quorum for the transaction of business, except that a lesser number, to be fixed by the committee, shall constitute a quorum for the purpose of taking sworn testimony.

Sec. 3. The committee, or duly authorized sub-committee thereof, is authorized to sit and act at such places and times during the sessions, recesses, and adjourned periods of the Senate, to require by subpoena or otherwise the attendance of such witnesses and the production of such books, papers, and documents, to administer such oaths, to take such testimony, to procure such printing and binding, and to make such expenditures as it deems advisable. The cost of stenographic services to report such hearings shall not be in excess of 25 cents per hundred words.

Sec. 4. The committee shall have power to employ and fix the compensation of such officers, experts, and employees as it deems necessary in the performance of its duties, but the compensation so fixed shall not exceed the compensation prescribed under the Classification Act of 1949 for comparable duties. The committee is authorized to utilize the services, information, facilities, and personnel of the various departments and agencies of the Government to the extent that such services, information, facilities, and personnel, in the opinion of the heads of such departments and agencies, can be furnished without undue interference with the performance of the work and duties of such departments and agencies.

Sec. 5. The expenses of the committee, which shall not exceed $150,000, shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

Sec. 6. The committee shall report to the Senate not later than February 28, 1951, the results of its study and investigation, together with such recommendations as to necessary legislation as it may deem advisable. All authority conferred by this resolution shall terminate on March 31, 1951.

Section 3486 of Title 18 of U.S.C.A. provides as follows:

"No testimony given by a witness before either House or before any committee of either House, or before any joint committee established by a joint or concurrent resolution of the two Houses of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committee in giving such testimony. But an official paper or record produced by him is not within the said privilege. June 25, 1948, 62 Stat. 833."

Section 192, Title 2, U.S.C.A., provides as follows:

"Refusal of witness to testify. Every person who having been summoned as a witness by the authority of either House of Congress, to give testimony or to produce papers upon any matter under inquiry before either House, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine or not more than $1,000 nor less than $100, and imprisonment in a common jail for not less than one month nor more than twelve months."

Article 6, Clause 2 of the Constitution of the United States provides:

"This Constitution and the laws of the United States which shall be made in pursuance thereof,

* * * shall be the Supreme law of the Land, and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding."

Act of Congress of February 11, 1893, 27th Statute at large, 443, which provides that:

"No person shall be excused from attending and testifying or from producing books, papers, tariffs, contracts, agreements and documents before the Interstate Commerce Commission, or in obedience of the Commission, * * * on the ground and for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to criminate him or subject him to a penalty or forfeiture. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before said Commissioner, or in obedience to its subpoena, or either of them, or in such case or proceeding."

Summons

"UNITED STATES OF AMERICA
CONGRESS OF THE UNITED STATES

To William L. Adams

1926 Pennsylvania Avenue, Baltimore, Maryland
Greetings:

Pursuant to lawful authority, YOU ARE HEREBY COMMANDED to appear before the Special COMMITTEE on Organized Crime in Interstate Commerce of the Senate of the United States, on June 27th, 1951, at 10.00 o'clock a. m., at their committee room 457, Senate Office Building, Washington, D. C., then and there to testify what you may know relative to the subject matters under consideration by said committee.

HEREOF FAIL NOT, as you will answer your default under the pains and penalties in such cases made and provided.

To E. H. FARRELL, JR.
to serve and return.

GIVEN under my hand, by order of the Committee, this 15th day of June, in the year of our Lord One Thousand Nine Hundred and Fifty-one.

CHAIRMAN, COMMITTEE ON ORGANIZED CRIME IN INTERSTATE COMMERCE."

No. 271

IN THE

Supreme Court of the United States

October Term, 1952

WILLIAM ADAMS, *Petitioner*

v.

STATE OF MARYLAND, *Respondent*

On a Writ of Certiorari to the Court of Appeals of the State of Maryland

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BRIEF FOR THE PETITIONER

JAMES A. COBB
GEORGE E. C. HAYES
JOSEPH H. A. ROGAN
J. FRANCIS FORD
Counsel for Petitioner

PRESS OF BYRON S. ADAMS, WASHINGTON, D C

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IN THE

Supreme Court of the United States

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STATE OF MARYLAND, *Respondent*

On a Writ of Certiorari to the Court of Appeals of the State of Maryland

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BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the Court of Appeals of Maryland is reported at 97 A. 2nd, 281.

JURISDICTION

The opinion and judgment of the Court of Appeals of Maryland affirming the conviction of the petitioner in the Trial Court of Baltimore City was entered on the 10th day of June, 1953. The jurisdiction of this Court is invoked under Title 28, U.S.C.A., Section 1257 (3). (App. p. 30) Petitioner by written motion for appropriate relief in the Criminal Court of Baltimore City prior to his trial objected to the admission in evidence of the transcript of his testimony taken before the Senate Crime Investigating Committee in Washington, D.C. under date of June 2, 1951. (R. pp.

19-21). Oral objection was also made at the trial of this case to the admission of this testimony, and an appropriate oral motion was made to strike it from the record. Both the oral objection (R. p. 58) and oral motion were overruled by the Trial Court and the testimony was admitted in evidence. (R. p. 68). Petitioner in thus objecting relied on Section 3486 of Title 18, U.S.C.A. The petitioner was found guilty by Judge E. Paul Mason, presiding in the Criminal Court of Baltimore City on May 29, 1952. (R. p. 78). The objection to the admission of the above testimony was renewed in the Motion for a New Trial heard by the Supreme Bench of Baltimore City which motion was overruled by the Supreme Bench of Baltimore City on November 26, 1952. (R. p. 80). Petitioner cited as error the failure of the Trial Court to exclude the evidence in accordance with the provisions of Section 3486, but the Court of Appeals of Maryland in its opinion (R. pp. 91-96) did not pass on the question whether or not the evidence was admissible despite Section 3486, but contented itself by saying that petitioner had testified before the Senate Crime Investigating Committee voluntarily, and that the evidence was admissible under the decision of *May* v. *United States,* 175 F. 2d 994. Petitioner obtained a stay of the Mandate of the Court of Appeals of Maryland for a period of sixty days pending the perfection of his application for a Writ of Certiorari in this Court.

QUESTION PRESENTED

I. Whether U.S.C.A., Title 18, Section 3486, reading as follows:

> "No testimony given by a witness before either House, or before any Committee of either House, or before any Joint Committee established by a joint or concurrent resolution of the two Houses of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury in giving such testimony, but an official paper

or record produced by him is not within the said privilege."—(Appendix p. 30)

renders inadmissible testimony given by Adams before a Senate Committee in response to a summons from said Committee in a criminal case in the Maryland Courts and in turn avoids a conviction which has to rely upon the testimony thus admitted?

STATUTES INVOLVED

The pertinent statutory provisions are printed in Appendix pp. 30-36.

STATEMENT OF CASE

As this Court in granting certiorari has confined counsel to a single question of whether Title 18, U.S.C.A. Section 3486, rendered inadmissible testimony given by petitioner in a criminal case in the Maryland Courts, we are setting forth in the Statement of the Case only such material as we conceive of as being of aid to the Court in fully reviewing this feature of the case.

On July 2, 1951, the petitioner was summoned to testify before the Special Committee to Investigate Organized Crime in Interstate Commerce, United States Senate. He was also served with a subpoena duces tecum calling upon him to produce certain books and records at the time he testified.

In response to both subpoenas, the petitioner appeared and answered several questions propounded by the Counsel for the Committee.

On August 15, 1951, the Grand Jury in and for the City of Baltimore, State of Maryland, presented the petitioner and Walter Rouse, and charged them with conspiracy together and with other persons to the jurors unknown, to violate the lottery laws of the State of Maryland. On August 24, 1951, an indictment was returned against them, charging them with the identical crime charged in the pre-

sentment. A trial before Judge Sherbow and a jury on December 20, 1951 resulted in a verdict of "guilty" as to each; but thereafter and on to wit February 4, 1952, the Supreme Bench of Baltimore City granted both the petitioner and Walter Rouse a new trial.

Prior to the second trial, the instant case, a motion to exclude the testimony taken before the Senate Crime Investigating Committee was renewed, same having been made in the first trial, but was overruled by the trial court on May 21, 1952. On the same day, May 21, 1952, Walter Rouse filed a motion for severance which was granted by the trial judge.

On May 26, 1952, the petitioner went on trial before Judge E. Paul Mason sitting as a Jury where during the trial of the case, the oral objection to the introduction of the testimony of the petitioner before the Senate Crime Investigating Committee was renewed and overruled. (R. pp. 30-31). At the conclusion of the trial, Judge Mason found a verdict of "guilty." (R. p. 78). A motion for a new trial was filed with the Supreme Bench of Baltimore City, alleging that the verdict was contrary to the evidence and the weight of the evidence, that the indictment was insufficient and set forth a crime unknown to the Maryland law and should have been dismissed; that evidence was admitted of certain overt acts barred by the Statute of Limitations; that portions of the transcript of testimony of William Adams taken before the Senate Investigating Committee were erroneously admitted in evidence; and because of newly discovered evidence. (R. pp. 89-90). The Supreme Bench of Baltimore City, without comment or reference to any of the grounds upon which reliance was had, on, to wit, November 26, 1952, overruled the Motion for a New Trial. (R. p. 4).

Sentence of seven years in the Maryland Penitentiary and a $2,000 fine was imposed on petitioner, William Adams, by Judge Mason, on December 2, 1952. (R. pp. 4, 79-80).

An appeal was noted to the Court of Appeals of Maryland on December 2, 1952, where the judgment of the lower court was affirmed by opinion filed June 10, 1053.

The only evidence introduced at the trial of this case by the state as against the petitioner was the testimony of the witness Reuben Maurice Jones, the testimony of the petitioner before the Senate Crime Investigating Committee, and the testimony of Captain Alexander Emerson, member of the Police Department of Baltimore City and head of the vice squad. Captain Emerson's testimony had no probative value as far as the proof in this case was concerned, he, being called as an expert for the purpose of explaining the meaning of the term "lay off." Reuben Maurice Jones testified that he and a man named Milton Foster along with a number of others were engaged in a lottery operation at an address on Calhoun Street in Baltimore from November 3, 1947 to March 20, 1948. The State sought to connect the petitioner herein with the Calhoun Street operation by testimony from the witness Jones, as to a telephone call he testified as to having received from the petitioner on Saturday, November 1, 1947; testimony from Jones as to placing profits from the operation in petitioner's safe at 1519 Pennsylvania Avenue, Baltimore, and by two subsequent conversations, one in petitioner's office and one on a golf course.

According to the State's brief filed in the Court of Appeals of Maryland, the predicate for the prosecution in this case was the petitioner's testimony before the Senate Investigating Committee and the testimony of the witness Jones furnished the necessary corroboration. Thus will be seen the vital importance of the question of the admissibility of petitioner's testimony before the Senate Crime Investigating Committee since without this the State would not have had sufficient evidence with which to convict the petitioner, accepting the State's theory of the case. Under the Maryland Law, a defendant in a conspiracy case cannot be convicted on the uncorroborated testimony of an

accomplice alone. *Lanasa* v. *State,* 109 Md. 602, *Wolf* v. *State,* 143 Md. 489. In this case, there is no corroboration of the witness Jones' testimony who, under the State's theory, was an accomplice.

Over the objection of counsel for the defense, there was read into the record testimony of one Alfred F. Goldstein, identified as a stenotype verbatim reporter, as given at a previous trial and as being substituted for the original notes of Mr. Goldstein, which had been lost, reporting an executive session of July 2, 1951 of the Special Committee to Investigate Organized Crime in Interstate Commerce, U. S. Senate, Senator O'Conor, Chairman; and the testimony of Williams Adams as taken by Mr. Goldstein, before that Committee, accompanied by counsel, J. Francis Ford and Joseph Rogan. (R. pp. 54-68). From this recorded testimony of Mr. Adams, given to the Senate Committee in executive session, before which he had been subpoenaed, there was read into the record testimony to the effect that he had been engaged in the numbers business in Baltimore, Maryland, up until, to wit, May, 1950; explaining his participating in the operation and an average daily take-in of $1,000.00 with a limit of $1.00 to persons playing and in the event of a number of persons playing with him, say eight, having a dollar on the same number, he would lay off, say $4.00 with someone else, but he could not remember the names of any such persons. (R. pp. 62-66).

SPECIFICATIONS OF ERROR TO BE URGED

The Court of Appeals of Maryland erred:

(1) In denying to the petitioner the rights granted him by Section 3486, Title 18, U.S.C.A., by approving the introduction in evidence of his testimony before the Senate Crime Investigating Committee, and thereby denying the supremacy of an Act of Congress in violation of Article 6 of the Constitution of the United States. (Appendix 31).

SUMMARY OF ARGUMENT

Under date of May 3, 1950 the Senate of the United States passed Senate Resolution 202. Among other things, this resolution provided for the appointment of a special committee from the Committee on Interstate and Foreign Commerce of the Senate and the Committee on the Judiciary of the Senate, "to make a full and complete study and investigation of whether organized crime utilizes the facilities of interstate commerce or otherwise operates in interstate commerce in furtherance of any transactions which are in violation of the law of the United States or of the State in which the transactions occur . . ." (Appendix 31-32).

Pursuant to the above-mentioned resolution, the committee summoned the petitioner personally and also by subpoena duces tecum to produce certain records. The committee's authority to issue its subpoena is found in Section 192 of Title II of U.S.C.A. Section 192 makes it a misdemeanor if the witness, who appears in response to a subpoena, refuses to testify. (Appendix p. 30).

Pursuant to the subpoena and the provisions of Section 192, the petitioner appeared before the Special Committee in executive session and answered certain questions propounded to him by counsel for the committee. Subsequently, this testimony was submitted to the Grand Jury in and for the City of Baltimore, State of Maryland, as a result of which the petitioner and one Rouse were indicted for conspiracy to violate the lottery laws of the State of Maryland. At the final trial of this case in the Criminal Court of Baltimore City a severance was obtained by Rouse, and the State proceeded against the petitioner. Petitioner's testimony before the Senate Committee was offered in evidence by the State at his trial. Petitioner, through his counsel, objected to the introduction of this testimony on the basis of the provisions of Section 3486 of Title 18 of the U.S.C.A. Over objection, the testimony was admitted. Petitioner contended that Section 3486 of Title 18 of

U.S.C.A. was binding on the Courts of the State of Maryland because of the supremacy clause, Article VI, Clause 2, of the Constitution of the United States. Solely because of the introduction of petitioner's testimony before the Senate Committee, he was tried and convicted in the Criminal Court of Baltimore City, and the Court of Appeals of Maryland subsequently affirmed the conviction on the theory that petitioner had not asserted an immunity before the committee and that his testimony was voluntary and, in construing Section 3486, relied completely on the decision of the Court of Appeals of the District of Columbia in *May* v. *United States,* 175 Federal 2d 994, 1000, 1001.

Petitioner contends that Section 3486 is:

1. Clear in its meaning

2. That the provisions of the statute are binding upon the Courts of the State of Maryland, because this statute represents part of the supreme law of the land, Article VI, Clause 2, of the Constitution of the United States

3. That the statute makes no distinction as to the type of testimony (voluntary or involuntary), the statute providing that "no testimony given by a witness . . . shall be used as evidence in any criminal proceedings against him in any court . . ."

ARGUMENT

The History of Section 3486

This Statute was originally passed in 1857 and is found in 11 Statutes 156 (App. 36). It was repealed and reenacted in 12 Statutes 333 (App. p. 34) and was amended in 52 Statutes 943 (App. p. 35), and is now codified as Section 192 of Title 2 U.S.C.A. (App. p. 31) and Section 3486 of Title 18 U.S.C.A. (App. p. 31).

In 1857 the New York Times was represented in Washington by one Simonton. Simonton was approached by two members of the House of Representatives, who advised him

that certain lobbyists were very much interested in the passage of certain legislation. These members informed Simonton that said lobbyists should be required to pay for the said legislation. The members of the House stated that they believed that Simonton would be able to assist them in this matter and solicited his aid. This information was obtained by some other members of the House of Representatives and was reported to the Speaker of the House. The matter was then referred to a select committee, who summoned Simonton and requested him to advise them which of the two members had approached him. Simonton refused to furnish the desired information, and the committee recommended that he be cited for contempt of the House.

The law at that time did not provide adequate machinery for the punishment of contempt of either House of Congress and due to a very recent experience of the Senate in this connection, it was felt that the citation of contempt would probably not be very effective.

Accordingly, one of the members of the House, a Mr. Orr from South Carolina, had a bill prepared, which was twofold in nature. The first phase of the bill is substantially found in Section 192 of Title 2 U.S.C.A., which provides that a witness can be summoned and required to talk under the penalty of contempt. The remnant of the second section is now codified as Section 3486 of Title 18, but the immunity offered by that section was complete in nature rather than partial as it now is.

Extended debate was entered into by the members of the House and at one point it was referred back to the committee. Upon its return to the floor of the House by reason of certain changes which were made, the bill received the very active support of some of the members who had opposed it in its original form.

What the intendment was of the House of Representatives which passed this Bill is reflected by reference here had to statements made and colloquies had between some

of the members at the time of its passage. The Congressional Globe of January 22, 1857, at page 428, records the following statement of Congressman Davis of Maryland:

> "Still further. Having met the difficulties on these legal grounds, I say further, that it has no relation to a proceeding of this kind at all, because if the rule of the law, which protects a witness from giving evidence, which in another criminal proceeding might be used as evidence against himself, had any relation to that clause of the Constitution, then this enactment is for the precise purpose of relieving the party from legal prosecution. The very purpose of the enactment is to grant him a pardon beforehand; to protect him against *all judicial proceedings;* to repeal—as far as his case is concerned—*every criminal* enactment under which he might have been previously held guilty; and, on the other hand, it disables *every instrument of evidence* from carrying into a court of justice the facts which he may here have exposed; so that, although the Constitution should be construed to apply to a rule of testimony existing under the common law, this is in entire conformity to the Constitution even so construed, by relieving the party from *all legal proceedings* by which he could be convicted. He is, therefore, neither constrained here to give evidence against himself in a judicial proceeding in which he is defendant, nor to give evidence which may be used in any judicial proceeding which may hereafter be instituted. It is relieving him from prosecution, compelling him to testify—repealing the criminal law so far as he is concerned, and giving the investigations of this House free course." (Emphasis ours)

As a part of the same discussion, the following exchange took place between Representative Washburn and Representative Taylor of the 34th Congress:

> "Mr. Washburn, of Maine. Although Congress should enact that no declaration a witness shall make before a committee of this House shall be used in any court of law in any State of the Union, would such a provision be binding upon the State Courts, or can Con-

gress override or abolish their local laws and rules of evidence? . . . .

"MR. TAYLOR. The gentleman from Maine, as one of his objections to this bill, states that if it be passed, any person making declarations before this House, or any of its committees, will, in case of a criminal prosecution against him, be liable under State law, if those declarations can be proved, to conviction. Let me ask that member whether it is not law in every State of this Union, that no compulsory confession of a witness can be produced in evidence against him? Would not, under the law of the land, such declarations everywhere be excluded?" (Congressional Globe, January 22, 1857, p. 429)

It is abundantly clear from the foregoing that in considering the enactment of this Act, the House of Representatives had clearly before it the question of the State-Federal relationship involved and fully mindful of same, and we submit significantly, that the House of Representatives passed the Bill—183 or more voting for it and only 12 members opposing it. (43 Congressional Globe, Thirty-fourth Congress, 3d Session, page 433).

The bill was immediately sent to the Senate and was considered by the committee. Extended debate was entered into upon its return to the floor of the Senate. The main opposition to the bill came from Senator Hale, from New York, and from Senator Pugh, from Ohio. Senator Hale opposed the bill in an extended speech, in which he pointed out that in his opinion the provisions of the bill would not be binding upon the States. He did not cite any authority for the proposition he advanced, nor did he receive any assistance in the debate other than from Senator Pugh, from Ohio, who reduced his notion on the question to writing. In opposing the bill because of his belief that the provisions of same could not be binding upon the States, Senator Pugh used the following language:

"Congress can make no law to shield a witness from prosecution in the courts of the several States, nor prescribe any rule of evidence for those courts. It cannot give the witness, therefore, any equivalent for the common law privilege of which this act seeks to deprive him."

Senator Seward, in directing the point, said:

"The bill does not provide that, but is broad and general. It is, that whoever shall make willful default or refuse to answer any question pertinent to the issue under consideration before a committee or either House, shall be guilty of misdemeanor. I think State rights, as well as the rights of citizens are involved."
* * * * (Congressional Globe, supra)

During the debates, hypothetical cases of various types were posed by certain of the members in both Houses, particularly the Senate, as to a witness being summoned to testify who had been guilty of murder and who, under the compulsion of Section 192, was required to testify. (p. 437, Congressional Globe). It was contended by those in the majority that Section 3486 would give the man immunity not only in the Federal Courts but in the Courts in the various States. After extended debate on the matter, and with the State-Federal relationship fully aired, the Act was passd that day, 46 to 3 in the Senate. (p. 445, Congressional Globe).

When the statute was repealed and re-enacted in 1859, 12 Statutes 333 (App. p. 33), the complete immunity provision found in the original statute was removed and the use of the testimony merely prohibited, the statute providing that the testimony "shall not be used as evidence in any criminal proceeding against any such witness in any court of justice."

In 1938, the statute was amended to include a joint committee of either House, the original statute provided for only a single committee. 52 Statute 943 (App. p. 34).

Thus, the statute remains today essentially the same as when it was originally adopted.

It is, of course, important that the language of the Bill was in no wise changed, but rather, as passed, contained inclusive and unmistakable language:

> "No testimony given by a witness before either House, or before any Committee of either House, or before any Joint Committee established by a joint or concurrent resolution of the two Houses of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury in giving such testimony, but an official paper or record produced by him is not within the said privilege."

History of Article 6, Clause 2 of the Constitution

The language of Article VI, Clause 2 of the Constitution is clear and unequivocal and its effectiveness in the instant case is beyond peradventure. (App. p. 31)

> "This Constitution and the laws of the United States which shall be made in pursuance thereof, * * * shall be the Supreme Law of the Land, and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding."

The thirteen original States, having operated under the Articles of Confederation up until the adoption of the Constitution, had found that certain grave deficiencies existed. At the same time, as pointed out by writers of history, the thirteen original States had been pretty well bled white as a result of the struggle during the Revolution. But as a result of the Revolution, they had secured to themselves certain rights which they were most reluctant to give up. At the same time the more discerning members of the convention realized that in setting up the new government, that this new government should possess certain powers. Under the Virginia plan, the larger States would have had a greater representation in the new congress than

the smaller States, and the opposition to this proposal from the smaller States was so great that the convention was about to break up over the matter. At this point, one of the great compromises of the convention took place—the so-called Connecticut Compromise, where it is proposed that so far as the Senate was concerned, each state was to have equal representation, while in the House of Representatives, the representation was to be according to population. Immediately after the adoption of this compromise, Luther Martin, from Maryland, proposed what subsequently became Article VI, Clause 2 of the Constitution. It was not Martin's notion, as the debates of the constitution convention show, that the new government should have a new supreme power, rather it was Martin's intention that the new government should be subservant to the States in many respects. The resolution was amended twice. The second is as it appears in the Constitution today. After the drafting of the constitution had been completed, it was submitted to the various States and Luther Martin, in discussing the matter before the Maryland General Assembly, contended that the purpose of the Constitution was the total abolition of all state governments and the erection upon their ruins of one great empire. Despite his rabid opposition, Maryland approved the new Government and it was adopted by the remaining States in some instances by large majority and in other instances unanimously and in some by a close vote. It would thus appear that it was the intention of the framers of the Constitution that the constitution and the laws of Congress passed pursuance thereof, should be the supreme law of the land (Farrand's Records of the Constitutional Convention).

The Language of Section 3486 Is Plain and Clear in Its Meaning

It should be remembered in considering the questions involved in this case that one of the powers delegated to the new government by the Constitution under Section 8, of Article I, reads:

> The Congress shall have power "To regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

Since the decision of *Gibbons* v. *Ogden,* (9 Wheaton 23), it has not been doubted that the Federal government has complete authority as far as interstate commerce matters are concerned, that it is not a problem with which any of the States need concern itself. It should also be remembered in this same section of Article I, Congress is given the authority

> "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof."

This clause is frequently referred to as the "necessary and proper clause" and is the basis for Hamilton's reference to "inferred powers".

The Special Committee, in pursuance of the power conferred upon it by Senate Resolution 202, was acting completely within its power when it summoned the petitioner to testify before it, in connection with the matter under investigation. Since it is necessary for the Congress from time-to-time to get information in connection with proposed legislation, this is another reason why the Committee was within its rights in summoning the petitioner.

The petitioner found himself on the horns of a dilemma. As was said by the Court of Appeals of the District of Columbia, in the case of *Nelson* v. *United States,* No. 11,353, decided July 2, 1953, "The Committee threatened prosecution for contempt, if he refused to answer; for perjury if he lied; and for gambling activities, if he told the truth."

At the same time, he was familiar, through advice of counsel, with the provisions of Section 3486, of Title 18, U. S. C. A., (supra).

The statute says "no testimony given by a witness * * * shall be used as evidence in any criminal proceeding against him in any court * * * "

The petitioner was prosecuted in the Criminal Court of Baltimore City, a State Court, as a result of an indictment handed down by the Grand Jury for the City of Baltimore, State of Maryland.

There can be no mistake as to the meaning of the language of this statute. A reference to the debates on this bill in Congress show definitely that it was the manifest intention of the Congress that the bill should apply to State Courts as well as to Federal Courts.

If the statute is applicable, then the presiding judge in the Criminal Court of Baltimore City should not have permitted the introduction of petitioner's testimony before the Senate Crime Investigating Committee in his trial in the Criminal Court of Baltimore City, and the Court of Appeals of Maryland should have reversed the conviction for this reason, if for no other.

The statute speaks of "no testimony" and of "any court." The statute says nothing about the witness claiming an immunity or whether he testifies voluntarily or otherwise. The statute is not qualified in any respect. Therefore, if the statute is applicable, it can only mean that no testimony given before a Congressional committee can be used as evidence against the witness in any criminal proceeding in any court. The word "any" is all inclusive.

The Provisions of Section 3486 Are Binding Upon the Courts of the State of Maryland, Because This Statute Represents Part of the Supreme Law of the Land, Article VI, Clause 2 of the Constitution of the United States

It will be argued by the Respondent in this case that while the statute, Section 3486, is clear in its meaning, it does not apply to proceedings in a State Court. This argument overlooks entirely the provisions of Article VI, Clause 2 of the Constitution. The petitioner contends that it was

the obvious purpose of Congress, judging from the debates in connection with the adoption of the Bill in 1857, that it was meant to cover proceedings in a State Court.

It should be remembered again, in connection with this matter, that the Senate Committee was investigating the effect of organized crime in interstate commerce. And, pursuant to the powers given to Congress under "the necessary and proper clause," it can make any and all laws necessary and proper for carrying into execution the powers it possesses. (*Dallas* v. *Bowles,* 153 Fed. 2d 464).

It is submitted that in connection with proposed legislation on this subject, it was necessary for the Congress to get certain information to determine, among other things, whether or not (1) legislation was necessary and (2) the type of legislation to be submitted.

As early as *Claflin* v. *Houseman,* 93 U.S. 130, this Court declared the doctrine of Federal Supremacy as far as a statute of the United States was concerned, and the doctrine of *Claflin* v. *Houseman* has been reaffirmed and reapplied in many cases since that time, as recently as the case of *Testa* v. *Katt,* 330 U.S. 396. More in point, as far as the present question is concerned, is the case of *Brown* v. *Walker,* 161 U.S. 591.

The Petitioner and Appellant, Brown, was an auditor for the Alleghany Valley Railway Company, and he had been subpoenaed as a witness before the Grand Jury at a term of the district court of the second district of Pennsylvania to testify as to a charge then under investigation by that body against certain officers and agents of the railway company for alleged violation of the Interstate Commerce Act. Certain questions were addressed to him which he refused to answer for the reason that his answer would tend to accuse and incriminate him. Brown was held in contempt. In that case, this court has before it for consideration the act of Congress of February 11, 1893, 27th Statute at large, 443, which provided that:

"No person shall be excused from attending and testifying or from producing books, papers, tariffs, contracts, agreements and documents before the Interstate Commerce Commission, or in obedience of the Commission. * * * on the ground and for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to criminate him or subject him to a penalty or forfeiture. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before said Commission, or in obedience to its subpoena, or either of them, or in such case or proceeding."

The argument was made in that case before this Court that while the witness was granted immunity from prosecution from the Federal government, he did not obtain such immunity against prosecution in the State courts. Mr. Justice Brown, in writing the opinion in that case stated with regard to this contention,

"We are unable to appreciate the force of this suggestion. It is true that the Constitution does not operate upon a witness testifying in the State Courts, since we held that the first eight amendments are limitations only upon the powers of Congress and the Federal courts, and are not applicable to the several States except so far as the 14th Amendment may have made them applicable."

"There is no such restriction, however, upon the applicability of Federal Statutes. The 6th article of the Constitution declares that, 'this Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.'

The Court in that case relied upon the case of *Steward* v. *Bloom*, 78 U.S. 11, Wall 493, where the question was whether

a debt contracted by a citizen in New Orleans prior to the breaking out of the rebellion was subject in a State court to the statute of limitations passed by Congress June 11, 1864, declaring that as to actions which should accrue during the existence of the rebellion, against persons who could not be served with process by reason of the war, the time when such persons were beyond the reach of judicial process should not be taken or deemed to be any part of the time limited by law for the commencement of such actions. The court held unanimously that the debt was subject to this act, and in delivering the opinion of the court, Mr. Justice Swayne said:"

> "But it has been insisted that the Act of 1864 was intended to be administered only in the Federal courts, and that it has no application to cases pending in the courts of the states. The language is general. There is nothing in it which requires or will warrant so narrow a construction. It lays down a rule as to the subject, and has no reference to the tribunals by which it is to be applied. A different interpretation would defeat to a large extent, the object of its enactment * * *. The judicial anomaly would be presented of one rule of property in the Federal courts and another and a different one in the courts of the State, and debts could be recovered in the former which would be barred in the latter."

Speaking of the question involved in the case of *Brown* v. *Walker,* Mr. Justice Brown continued:

> "The act in question contains no suggestion that it is to be applied only to the Federal Courts. It declares broadly that 'no person shall be excused from attending and testifying * * * before the Interstate Commerce Commission * * * on the ground * * * that the testimony * * * required of him may tend to criminate him, etc. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify,' etc. It is not that he shall not be prosecuted for or on account of any crime concerning which he may testify, which might possibly be

urged to apply only to crimes under the Federal law and not to crimes, such as the passing of counterfeited money, etc., which are also cognizable under state laws; but the immunity extends to any transaction, matter, or thing concerning which he may testify, which clearly indicated that the immunity is intended to be general and to be applicable whenever and in whatever court such prosecution may be had."

The doctrine of supremacy as announced in the case of *Brown* v. *Walker* has never been overruled by any subsequent decision of this court, and it would seem therefore in the instant case, that the courts of Maryland were obliged to give full effect to the plain meaning and intent of Section 3486 of Title 18, U.S.C.A., and to exclude from the evidence in this case the testimony of the Petitioner before the Senate Crime Investigating Committee. It should be pointed out that in the instant case, the Congressional Committee was investigating the effect that organized crime had on interstate commerce, and if in a situation where the Congress has seen fit to act and to require testimony of witnesses, that the Congress would have the right to say what could or could not be done with the testimony it had taken. A similar provision of the law is found in the bankruptcy law, where in Section 25 of Title 11 of U.S.C.A. it sets out the duties of the bankrupt, included among which is the duty of the bankrupt to submit to an examination concerning the conduct of his business, the cause of his loss, his dealings with creditors and other persons, the amount, kind, and whereabouts of his property, and in addition, all matters which may effect the administration and settlement of his estate, "*but no testimony given by him shall be offered in evidence against him in any criminal proceeding.*" This statute has been before various State courts where the evidence has been held inadmissible.

Daniels v. *State*, 57 Fla. 1
People v. *Lay*, 193 Mich. 476
See also *People* v. *Donnenfeld*, 198 App. Div. 918, 135 N. E. 903.

Section 3486, Title 18, U.S.C.A., the immunity statute under consideration, has been before at least one State Court and that is in the case of *Erickson* v. *Hogan,* 98 N.Y. Supp. 2nd 858 wherein, it was decided expressly that this statute is applicable to procedure in the State courts.

The question here involved, was recently decided differently from the determination of the Court in the instant case in the case of *U. S.* v. *DiCarlo,* 102 Fed. Supp. 599.[1] The language of the Court in that case is enlightening and we submit controlling:

> "The foregoing considerations lead inescapably to the conclusion that the defendant is entitled to immunity against disclosures that might incriminate him of violations of state law as well as immunity against self-incrimination of a federal crime. If this conclusion cannot be said to rest upon the principle of state supremacy in the domain of reserved powers, as hereinabove discussed, it finds ample support in the principle that the Fifth Amendment operates as a restraint upon federal officers investigating state crimes.
>
> "It does violence to the American concept of constitutional governments in a system of dual sovereignties to suppose that there is an area of overlapping federal jurisdiction in which the federal government is released from constitutional restraints upon governmental power.
>
> "The rule that the Fifth Amendment affords protection only against prosecutions of federal offenses was declared in the Murdock case. The language of the opinion in that case impliedly negatives the suggestion that the rule should be thus limited in its application in cases where a federal investigation involves 'inquiries to discover evidence of a state crime'. The Murdock case therefore presents no barrier to the extension of the immunity of the Fifth Amendment to witnesses in a Congressional investigation of state crime. United States v. Saline Bank, supra, supports

[1] In this case defendant was charged in an indictment containing eight counts with violating Title 2, Sec. 192, U.S.C.A. in refusing to answer pertinent questions put to him as a witness before a sub-committee of a special committee of the United States Senate at Cleveland, Ohio, on January 19, 1951.

the view that the immunity of the Fifth Amendment may be so extended. While no express reference is made to the Fifth Amendment in that case, the implication is unmistakable that the decision rests upon the authority of the immunity clause of that Amendment. The same is true of the statements of Mr. Justice Holmes in Ballmann v. Fagin, supra. *The fifth Amendment operates as a restraint upon federal officers and federal agencies investigating federal matters. No good reason appears why this restraint should be removed in a federally conducted investigation of state crime.*

"For the reasons assigned, I am of the opinion that the defendant as a witness was entitled to claim immunity against disclosures that might subject him to prosecution under either federal or state laws." (Emphasis supplied)

It is submitted that the rulings of the presiding Judge in the Criminal Court of Baltimore City and the opinion of the Court of Appeals of Maryland, on the question now before this Court, are further in error for the reason that Article 2 of the Declaration of Rights, of the Constitution of Maryland, provides:

"The Constitution of the United States, and the Laws made or which shall be made in pursuance thereof, and all Treaties made, or which shall be made, under the authority of the United States, are and shall be the Supreme Law of the State; and the Judges of this State, and all the People of this State, are and shall be bound thereby, anything in the Constitution or Law of this State to the contrary notwithstanding."

This provision of the Maryland Declaration of Rights, above quoted, shows beyond possibility of successful contradiction, that the framers of the Maryland Constitution intended that it was to be mandatory upon the Judges in the various Courts in Maryland to enforce the provisions of the laws of Congress, enacted in pursuance of the Constitution, as part of the law of Maryland.

The Statute Makes No Distinction as to the Type of Testimony (Voluntary or Involuntary), the Statute Providing That "No Testimony Given by a Witness * * * Shall be Used as Evidence in Any Criminal Proceedings Against Him in Any Court * * *"

The Maryland Court of Appeals, in the Opinion by Judge Delaplaine, referred to both Section 192 of Title 2 U.S.C.A. and Section 3486 of Title 18 U.S.C.A. However, in disposing of the case, despite these two sections, the Court decided that it would accept the decision as announced by the Court of Appeals of the District of Columbia, in *May* v. *United States,* that in the absence of a refusal to answer followed by compulsion to answer, no immunity from prosecution arising out of the subject matter of testimony inures to the benefit of a witness before Congress either (1) under the Fifth Amendment of the Federal Constitution, or (2) under the statute penalizing failure to testify before Congress, or (3) under the statute providing that no testimony given before Congress shall be used as evidence in any criminal proceeding.

The Court adopted in toto the language of Mr. Justice Prettyman, who wrote the opinion in the May case:

> "The Fifth Amendment deals with compulsion to testify against oneself. Experience long demonstrated that public authorities must at time, in the public interest, obtain information which might incriminate the informant. They may compel that testimony. But they cannot violate, qualify or limit the Constitution. Therefore, when they compel testimony, they cannot use it against the informant. The Constitution is rigid in this respect.
>
> "But not all testimony given public authorities is compelled. Some is given voluntarily. and some, even though not volunteered, is supplied without objection. The Constitution says nothing about such testimony. It does not provide that what a man says voluntarily may not be used against him. So a statute which deals generally with the use of testimony falls partly within and partly without the scope of the Amendment. In

so far as it relates to the use of involuntary testimony, it cannot impinge upon the prohibition of the amendment. In so far as it relates to the use of other testimony, it is outside the scope of the Amendment and unaffected by it. The constitution does not require that a statute dealing generally, but exclusively, with the use of testimony be construed to prevent prosecution upon the subject matter of the testimony."

The marked distinction between the two cases can be unquestionably demonstrated. This petitioner, under subpoena and under the stress of being charged with a misdemeanor should he have refused to testify? (Section 192, Title 2, U.S.C.A.) appeared and answered questions propounded to him by counsel for the Committee. Whereas, Ex-Congressman May, at his own insistence, without summons, volunteered what he presumably considered as exculpatory statements, and in the trial of the case, through counsel made same the text of a press release. The procedure in that case we herewith incorporate by the following reference to the trial record in that case:

"Mr. Paisley: Here is a release to the press. It is styled 'House of Representatives, Committee on Affairs, Washington, D. C. Andrew J. May, 7th District Kentucky. Release, afternoon papers, Sept. 5, 1946, Warren E. Magee & Dan J. Anderson, Attys. at Law, Munsey Bldg., Washington, D. C.'

"Attached to that press release is a copy of a letter Mr. May wrote to the Chairman of the Meade Committee and 'Statement of Honorable A. J. May before the Senate Special Committee to investigate the National Defense Program, July 26, 1946,' and attached to that is what purports to be an accounting of the funds he received from Cumberland Lumber Co. * * *

"Mr. Paisley: In fact, we would like the whole thing identified as Government Exhibit 172.

"(The press release and attached document recorded in evidence as Government Exhibit 172.)"

This testimony was offered during cross-examination by the Government without objection from the defendant. The contrast of circumstances in the instant case is apparent.

It is further to be noted that in that case the appellate court at page 1000 of the Record stated: "The problem before us is whether these appellants were entirely immune from prosecution. *We are not now discussing the admissibility of evidence.*" (Emphasis supplied). In the instant case the admissibility of the evidence is the primary issue.

Thus, relying on the decision in the case of *May* v. *United States,* the Court of Appeals of Maryland erred in affirming the decision of the Criminal Court of Baltimore City, since the Court in the May case did not pass upon the questions involved in the instant case.

Aside, however from the distinctions showing the lack of applicability of the May case to the instant case, the Court of Appeals of the District of Columbia in a case much more recently decided, to wit, July 2, 1953, under circumstances which come much nearer to paralleling the instant case, has in a majority opinion, with Judge Prettyman dissenting, who wrote the May opinion, exploded the theory of voluntariness relied on by Judge Delaplaine in the instant case. This case was *Charles E. Nelson, Appellant* v. *United States of America, Appellee,* No. 11,353, decided July 2, 1953. Judge Bazelon, speaking for the Court, with Judge Edgerton concurring, used such significant and applicable language as the following:

> "Nelson's freedom of choice had been dissolved in a brooding omnipresence of compulsion. The Committee threatened prosecution for contempt if he refused to answer, for perjury if he lied, and for gambling activities if he told the truth * * *.
>
> "If there is anything to suggest that a congressional committee hearing is less awesome than a police station or a District Attorneys Office, and should therefore be viewed differently, it has escaped our notice.

> The similarity has become more apparent as the 'investigative' activities of Congress have become more distinguishable from the law enforcement activities of the Executive. We would have to be that 'blind' court, * * * that does not see what 'all others can see and understand' not to know that there is wide concern, both in and out of Congress, over some aspects of the exercise of the Congressional power of investigation".

The dissenting opinion of Judge Prettyman in this Nelson case does two things—(1) it shows that the question of the voluntariness of Nelson's testimony was squarely before the Court and that his was the minority view as to its interpretation; and (2) it clearly showed that his opinion in the instant case would have been that petitioners testimony should not have been admitted in evidence. We quote from a pertinent portion of his dissenting opinion:

> "As to the Statute (Sec. 3486 of Title 18) I think it was error to admit the documents against Nelson. While they did not constitute testimony, they did constitute evidence given by Nelson while he was a witness before the Committee. But I do not think this error constituted reversible error. There was more than ample other evidence to establish Nelson's guilt; evidence of employees, participants in the numbers game, etc. Some twenty witnesses who said they were otherwise engaged in the numbers operation, testified. They all testified from personal knowledge. His guilt was unquestionably established beyond a reasonable doubt by evidence not connected with these records * * *"

In the instant case, there were not records or documents offered, but actual "testimony" as prohibited by the Act. In the instant case, there was absolutely no other testimony other than that of the petitioner on which the conviction could be predicated. Mindful of the Maryland Law that the conviction could not depend upon the uncorroborated testimony of an accomplice, reliance had to be had solely on this inadmissible testimony of the petitioner himself.

There is still another aspect of this case which we feel cannot be minimized. If this Court were to adopt the position urged by the Attorney General of Maryland, there seems to us to be no escape from the fact that either the Congress of the United States would be put in the position of having lured the petitioner into testifying with a false hope based on its representations to him, or the sovereign State of Maryland would be guilty of convicting one of its citizens through trickery and deceit. The rights of the petitioner as a citizen of the United States and as a citizen of the State of Maryland entitle him to better treatment. As a matter of fact if the theory of the Attorney General of Maryland be accepted, the very purpose of the promulgating of Section 3486, Title 18, U.S.C.A. would be thwarted. That purpose is, or must be, to render possible to the Houses of Congress the enacting of useful legislation in various areas—here in the area of corrective criminal legislation. As is most often true in this field, the best possibilities lie in obtaining information from persons whose contacts have given them intimate knowledge of what is going on and in a great number of instances it means persons with criminal or previously criminal involvements. As has been evidenced, it has long been a part of Anglo-American jurisprudence that in exchange for this type of information, and as an inducement to give same, courts and legislative bodies offer immunity for this type of testimony. Is it moral that the Federal Government should induce a citizen to exchange testimony for full immunity and that a State should use the testimony so obtained not only as a basis of conviction of that citizen, but as a means of tolling the running of a Statute of Limitations against an offense confessed as having been previously committed? Would not any sane person refuse to give the information, however important or essential it might be in the field of remedial legislation, even at the pains of a penalty for contempt as against the possibility of a severe penalty—here seven (7)

years in the penitentiary—for a substantive offense? How better could the ends of justice be defeated.

The position of the Maryland Attorney General apparently adopted by the Court that the immunity of the petitioner was waived because his testimony before the Senate Committee was "Voluntary", aside from being factually unsound as hereinbefore demonstrated and legally unsound as shown by the Nelson case here quoted from, is exploded by this Court in the case of United States vs. Monia, 347 U. S. 425, which was a prosecution for the alleged violation of the Federal Anti-Trust Act.

In passing upon a demurrer of the United States to special pleas in bar to the effect that in obedience to a subpoena served the defendant appeared as a witness before the grand jury and gave testimony substantially connected with the transactions covered by the indictment wherein the United States contended that the pleas were insufficient since they failed to allege that the witness had failed to assert any claim of privilege against self-incrimination and that, therefore, neither the Fifth Amendment of the Constitution nor the immunity statute could avail him. Mr. Justice Roberts, in delivering the majority opinion of the Court said:

> "The District Court overruled the demurrers on the ground that the plain mandate of the statute precluded prosecution of the appellees whether they had claimed the privilege or not. We hold that the decision was right."

The Act that was involved was the Sherman Anti-Trust Act, which provides in part as follows:

> "... no person shall be prosecuted or be subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, in any proceeding, suit, or prosecution under said Acts (the Interstate Commerce Act, the Sherman Anti-trust Act, and other acts); Provided, further, that no

person so testifying shall be exempt from prosecution or punishment for perjury committed in so testifying."

Mr. Justice Roberts further said:

"The legislation involved in the instant case is plain in its terms and, on its face, means to the layman that if he is subpoenaed, and sworn, and testifies, he is to have immunity. Instead of being a trap for the Government, as was the original Act, the statutes in question, if interpreted as the Government now desires, may be a trap for the witness. Congress evidently intended to afford Government officials the choice of subpoenaing a witness and putting him under oath, with the knowledge that he would have complete immunity from prosecution respecting any matter substantially connected with the transactions in respect of which he testified, or retaining the right to prosecute by foregoing the opportunity to examine him. That Congress did not intend, or by the statutes in issue provide, that, in addition, the witness must claim his privilege, seems clear. It is not for us to add to the legislation what Congress pretermitted."

The pertinency of the ruling in this case is emphasized when reference is had to the opinion of Judge Delaplaine of the Court of Appeals of Maryland, who said, among other things:

"In this case appellant had testified before the Senate Committee without any claim of immunity from self-incrimination. We understand that he refused to answer one question, not material here, and one of the senators made the comment that the Committee did not have the power to compel an answer to that question. But the testimony of appellant which was introduced in the Court below was given before the Committee voluntarily. The constitutional privilege against the giving of incriminating testimony must be asserted before an immunity is established. To be liable to the penalties of the statute requiring testimony before Congress, a witness must be asked a question and he must refuse to answer. As the Senate Committee did not compel appellant to testify, no immunity arose.

Consequently his testimony was admissible in evidence at his trial. The Court did not do him any injustice by admitting statements which he himself gave voluntarily under the sanctity of an oath."

CONCLUSION

We believe that there has been consistent error in every phase of the trial in the courts below. The criminal court of Baltimore City, through Trial Judge Mason, erred in allowing in evidence, over the objection of petitioner's counsel, testimony of the petitioner given before the Senate Investigating Committee and using same as the sole basis of a conviction. The Court of Appeals of Maryland, through Judge Delaplaine, erred in holding (1) that the testimony given by the petitioner before the Senate Investigating Committee was "voluntary", (2) in holding that the petitioner by failing to claim his immunity from selfincrimination before the Senate Investigating Committee made possible the use of that testimony against him in the Criminal Court of Baltimore, and (3) in failing to hold that Section 3486 of Title 18 of the U.S.C.A. rendered the petitioner immune from having testimony given by him before the Senate Investigating Committee used against him in the Criminal Court of Baltimore, in total disregard of the plain language of the statute and the reasonable interpretation of the principal established by this Court in United States vs. Monia, supra, to the effect that the immunity of a statute with comparable language is invocable, without more, when the statute provides against the use of such testimony against a defendant in any court.

The Constitutional rights of the petitioner have clearly been violated and the case should be reversed.

James A. Cobb
George E. C. Hayes
Joseph H. A. Rogan
J. Francis Ford
Counsel for Petitioner

APPENDIX

Title 28, Section 1256 (3)

> By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929.

Section 3486 of Title 18 of U.S.C.A. provides as follows:

> "No testimony given by a witness before either House or before any committee of either House, or before any joint committee established by a joint or concurrent resolution of the two Houses of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committee in giving such testimony. But an official paper or record produced by him is not within the said privilege. June 25, 1948, 62 Stat. 833."

Section 192, Title 2, U.S.C.A., provides as follows:

> "Refusal of witness to testify. Every person who having been summoned as a witness by the authority of either House of Congress, to give testimony or to produce papers upon any matter under inquiry before either House, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100, and imprisonment in a common jail for not less than one month nor more than twelve months."

Article 6, Clause 2 of the Constitution of the United States provides:

> "This Constitution and the laws of the United States which shall be made in pursuance thereof,

> • • • shall be the Supreme law of the land, and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding."

The 81st Congress, Second Session, passed Senate Resolution 202, which resolution provides as follows:

> Resolved, That a special committee composed of five members, two of whom shall be members of the minority party, to be appointed by the President of the Senate from the Committee on Interstate and Foreign Commerce of the Senate and the Committee on the Judiciary of the Senate, is authorized and directed to make a full and complete study and investigation of whether organized crime utilizes the facilities of interstate commerce or otherwise operates in interstate commerce in furtherance of any transactions which are in violation of the law of the United States or of the State in which the transactions occur, and, if so, the manner and extent to which, and the identity of the persons, firms, or corporations by which such utilization is being made, what facilities are being used, and whether or not organized crime utilizes such interstate facilities or otherwise operates in interstate commerce for the development of corrupting influences in violating of law of the United States or of the laws of any State: Provided, however, That nothing contained herein shall (1) authorize the recommendation of any change in the laws of the several States relative to gambling, (2) effect any change in the laws of any State relative to gambling, or (3) effect any possible interference with the rights of the several States to prohibit, legalize, or in any way regulate gambling within their borders. For the purposes of this resolution, the term "State" includes the District of Columbia or any Territory or possession of the United States.
>
> Sec. 2. The Committee shall select a chairman from among its members. Vacancies in the membership of the committee shall not affect the power of the remaining members to execute the power of the remaining members to execute the functions of the committee,

and shall be filled in the same manner as the original selection. A majority of the members of the committee, or any subcommittee thereof, shall constitute a quorum for the transaction of business, except that a lesser number, to be fixed by the committee, shall constitute a quorum for the purpose of taking sworn testimony.

Sec. 3. The committee, or duly authorized sub-committee thereof, is authorized to sit and act at such places and times during the sessions, recesses, and adjourn periods of the Senate, to require by subpoena or otherwise the attendance of such witnesses and the production of such books, papers, and documents, to administer such oaths, to take such testimony, to procure such printing and binding, and to make such expenditures as it deems advisable. The cost of stenographic services to report such hearings shall not be in excess of 25 cents per hundred words.

Sec. 4. The committee shall have power to employ and fix the compensation of such officers, experts, and employees as it deems necessary in the performance of its duties, but the compensation so fixed shall not exceed the compensation prescribed under the Classification Act of 1949 for comparable duties. The committee is authorized to utilize the services, information, facilities, and personnel of the various departments and agencies of the Government to the extent that such services, information, facilities, and personnel, in the opinion of the heads of such departments and agencies, can be furnished without undue interference with the performance of the work and duties of such departments and agencies.

V.

12 Statute 333

U. S. Statutes at Large
36 — 37th Congress
1859 — 63.

Chapter XI. — An Act amending the Provisions of the second Section of the Act of January 24, 1857, enforcing the attendance of witnesses before Committees of either House of Congress.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the second section of the act entitled "An Act more effectually to enforce the attendance of witnesses on the summons of either House of Congress, and to compel them to discover testimony," approved January 24, 1857, be amended, altered, and repealed, so as to read as follows: That the testimony of a witness examined and testifying before either House of Congress, or any committee of either House of Congress, shall not be used as evidence in any criminal proceeding against such witness in any court of justice: Provided, however, That no official paper or record, produced by such witness on such examination, shall be held or taken to be included within the privilege of said evidence so as to protect such witness from any criminal proceeding as aforesaid; and no witness shall hereafter be allowed to refuse to testify to any fact, or to produce any paper touching which he shall be examined by either House of Congress, or any committee of either House, for the reason that his testimony touching such fact, or the production of such paper, may tend to disgrace him or otherwise render him infamous: Provided, That nothing in this act shall be construed to exempt any witness from prosecution and punishment for perjury committed by him in testifying as aforesaid.

Approved, January 24, 1862.

VI.

52 Statute 943

Joint Resolution

U. S. Statutes at Large
75th Congress, 3d Session
1938.

To Amend Sections 101, 102, 103, 104 and 859 of the Revised Statutes of the United States relating to Congressional investigations.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 101, 102, 103, 104 and 859 of the Revised Statutes of the United States are hereby amended to read as follows:

"Sec. 101. The President of the Senate, the Speaker of the House of Representatives, or a chairman of any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or of a committee of the whole, or of any committee of either House of Congress, is empowered to administer oaths to witnesses in any case under their examination.

"Sec. 102. Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, wilfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 or less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months.

"Sec. 103. No witness is privileged to refuse to testify to any fact, or to produce any paper, respecting which he shall be examined by either House of Congress, or by any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or by any committee of either House, upon the ground that his testimony to

such fact or his production of such paper may tend to disgrace him or otherwise render him infamous.

"Sec. 104. Whenever a witness summoned as mentioned in section 102 fails to appear to testify or fails to produce any books, papers records, or documents, as required, or whenever any witness so summoned refuses to answer any question pertinent to the subject under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee or subcommittee of either House of Congress, and the fact of such failure or failures is reported to either House while Congress is in session, or when Congress is not in session, a statement of fact constituting such failure is reported to and filed with the President of the Senate or the Speaker of the House, it shall be the duty of the said President of the Senate or Speaker of the House, as the case may be, to certify, and he shall so certify, the statement of facts as aforesaid under the seal of the Senate or House, as the case may be, to the appropriate United States attorney, whose duty it shall be to bring the matter before the grand jury for its action."

"Sec. 859. No testimony given by a witness before either House or before any committee of either House, or before any joint committee established by a joint or concurrent resolution of the two Houses of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committed in giving such testimony. But an official paper or record produced by him is not within the said privilege."

Any member of either House of Congress may administer oaths to witnesses in any matter depending in either House of Congress of which he is a Member, or any committee thereof.

Approved, June 22, 1938.

VIII.

11 Statute 156

U. S. Statutes at Large
34 — 35th Congress
1855 — 59

Chap. XIX.—An Act more effectually to enforce the Attendance of Witnesses on the Summons of either House of Congress and to compel them to discover testimony.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter before either House, or any committee of either House of Congress, who shall wilfully default, or who, appearing, shall refuse to answer any question pertinent to the matter of inquiry under consideration before the House or committee by which he shall be examined, shall in addition to the pains and penalties now existing, be liable to indictment as and for a misdemeanor, in any court of the United States having jurisdiction thereof, and on conviction, shall pay a fine not exceeding one thousand dollars and not less than one hundred dollars, and suffer imprisonment in the common jail not less than one month nor more than twelve months.

Sec. 2. And be it further enacted, That no person examined and testifying before either House of Congress, or any committee of either House, shall be held to answer criminally in any court of jurisdiction, or subject to any penalty or forfeiture for any fact or act touching which he shall be required to testify before either House of Congress or any committee of either House as to which he shall have testified whether before or after the date of this act, and that no statement made or paper produced by any witness before either House of Congress or before any committee of either House shall be competent testimony in any criminal proceeding against such witness in any court of justice; and no witness shall hereafter be allowed to refuse to testify to any fact or to produce any paper touching which he shall be examined by either House of Congress, or any committee of either House, for the reason that his testimony touching such fact or the production of

such paper may tend to disgrace him or otherwise render him infamous; Provided, That nothing in this act shall be construed to exempt any witness from prosecution and punishment for perjury committed by him in testifying as aforesaid.

Sec. 3. And be it further enacted, That when a witness shall fail to testify, as provided in the previous sections of this act, and the facts shall be reported to the House, it shall be the duty of the Speaker of the House or the President of the Senate to certify the fact under the seal of the House or Senate to the district attorney for the District of Columbia, whose duty it shall be to bring the matter before the grand jury for their action.

Approved, January 24, 1857.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 271

WILLIAM ADAMS,
Petitioner,

vs.

STATE OF MARYLAND,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MARYLAND

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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The Daily Record Co., Baltimore 3, Md.

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STATEMENT OF THE CASE

This is a Petition for a Writ of Certiorari to the Court of Appeals of Maryland. Petitioner was tried under indictment dated August 24, 1951, upon a charge of conspiracy to violate the lottery laws of Maryland, together with one Walter Rouse and others. Rouse asked for a severance and was tried separately. Petitioner was tried before a Judge, without jury, in the Criminal Court of Baltimore City and

found guilty. Upon his appeal to the Court of Appeals of Maryland, said conviction was affirmed. Petitioner has now applied for the Writ of Certiorari.

QUESTIONS PRESENTED

I.

Whether Certain Testimony Given by Petitioner before a Senate Committee was Admissible in his Trial on the Conspiracy Charge, in the light of the Federal Statute (U. S. C. A. Title 18, Sec. 3486).

II.

The Related Question of Whether or Not Petitioner's Rights under the Due Process Clause of the Fourteenth Amendment of the Constitution were Violated by his Conviction under the Evidence in the Case, including that referred to above.

STATEMENT OF THE FACTS

The chief witness against Adams was one Reuben Maurice Jones, whose testimony was clear and extensive and tended to show that Adams conspired to violate the lottery laws not only with him, but also with other persons, beginning in November of 1947.* A number of other persons were involved (33-34). Money taken in by the witness as a result of the numbers game was placed in the safe of the office of the Adams Realty Company, a business operated by Adams (35). Adams had deposited an amount as high as $29,000 therein (36). The witness continued in this business until March 1948, at which time he quit, leaving the money in the safe and turning the books of the operation over to Adams (37, 38), the witness stating that his reason for quitting was that there was no future in the business

* All references are to pages of the Record.

(38). Adams continued to carry on the business, together with others, and the witness testified that he saw Adams on a golf course in October of 1949, at which time he was still in the business, because the witness was kidding him about a number which had "hit" on the previous Saturday, and at that time, they discussed the possibility of Jones re-entering the operation (40). The witness had a further discussion with Adams in Adams' office in June of 1950, at which time they discussed the possibility of beginning a numbers operation with a man named Henry Parks (44-45). It will be noted that such testimony fixes Adams as continuing in the business, certainly to October 1949, and probably as late as June 1950.

There was admitted into evidence testimony to show that on July 2, 1951, Adams was summoned to testify before the Special Committee to Investigate Organized Crime in Inter-State Commerce of the United States Senate. He appeared and answered several questions propounded by the counsel for the Committee. At this time he freely testified as to his being involved in a lottery for over a year, stating that he had withdrawn from the business in May of 1950 (67). It is to be especially noted that certain questions which were asked him by the Committee, he declined to answer on the grounds that his answer to the question would tend to incriminate him, and was told by a member of the Committee (Senator Hunt), that there was no way the Committee could compel the witness to answer (71). Adams was accompanied by counsel at the time he appeared before the Committee.

The Maryland statute of limitations provides that prosecution for the crime of conspiracy must be commenced in Maryland within two years of the commission of the offense (Annotated Code of Maryland (1951 Ed.) Article 27, Sec.

46.) The foregoing constituted all of the testimony or evidence in the trial of this case which has any bearing on the questions presented here. Adams' indictment was handed down on August 24, 1951, which date is well within two years of October 1949, and of course any subsequent date. Petitioner objected to the introduction of any portion of his testimony before the Senatorial Committee by a motion to dismiss prior to his trial (21), stating in said motion that he had been forced to appear and compelled to testify under threat of possible imprisonment, citing U. S. C. A. Sec. 192, Title II, and further citing U. S. C. A. Sec. 3486, Title 18, which motion was overruled. Adams renewed his objection to the admissibility of the transcript from the Senatorial Committee at the time it was offered in evidence (64, 65). The opinion of the Court of Appeals of Maryland (Delaplaine, J.) affirming the conviction will be found in the Record at pp. 101 et seq.

ARGUMENT

Petitioner urges two specifications of error, namely:

(A) That by approving the introduction in evidence of Petitioner's testimony before the Crime Investigating Committee, the Court affirmed a violation of Petitioner's right under Section 3486 of Title 18 U. S. C. A., thereby denying the supremacy of an Act of Congress, and

(B) That the Court of Appeals of Maryland erred in affirming the judgment of the Criminal Court of Baltimore City, which action in the view of the Petitioner, was based upon violations of the rights of Petitioner under the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

(1) Respondent urges that the admission into evidence of testimony indicating the statements made by the Petitioner before the Senate Investigating Committee was not error for these reasons:

First: That the immunity granted by Title 18 U. S. C. A. Section 3486 is not complete, and that Petitioner therefore, in testifying voluntarily before the Committee, has waived the privilege of self-incrimination;

Secondly: That the statute referred to above applies only to criminal prosecutions instituted by the Federal Government and in the Federal courts, and does not preclude the admission of such evidence in a criminal prosecution in a State court, for the reasons that (a) the Congress of the United States does not have the power to proscribe rules of evidence for the courts of the several States, and (b) that assuming that Congress has such power, the intention to exercise it has not been clearly manifested in Title 18 U. S. C. A. Sec. 3486; and

Thirdly: That the testimony given by Appellant before the Senate Committee was not inadmissible as an involuntary confession or admission in violation of the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States or Article 22 of the Maryland Declaration of Rights.

Petitioner's testimony given before the Senate Crime Committee was given mainly without any claim of self-incrimination. He did refuse to answer certain questions on that ground and was told by a member of the Committee that it did not have the power to require an answer (71). It is well settled that the privilege of self-incrimination is waived unless invoked. *Henze v. State,* 154 Md. 332; *United States v. Murdock,* 284 U. S. 141, 76 L. Ed. 210.

In the Court of Appeals of Maryland, Respondent argued that Section 3486 of Title 18 gave him a complete immunity. He has now apparently abandoned this argument and is claiming only that his testimony before the Senate Committee was not admissible in evidence in his prosecution for conspiracy. It was held by the Supreme Court in the case of *Counselman v. Hitchcock*, 142 U. S. 547, 35 L. Ed. 1110, that such a statute does not give immunity so as to prevent a claim of self-incrimination. This holding was applied to the statute in the recent case of *United States v. Bryan*, 339 U. S. 323, 94 L. Ed. 884, where the Court said at page 893:

> "Respondent also contended at the trial that the court erred in permitting the Government to read to the jury the testimony she had given before the House Committee when called upon to produce the records. She relies upon Rev. Stat. §859, now codified in §3486 of title 18 U. S. C. A., F. C. A. title 18, §3486, which provides that 'No testimony given by a witness before * * * any committee of either House, * * * shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committed in giving such testimony * * *.' Admittedly her testimony relative to production of the books comes within the literal language of the statute; but the trial court thought that to apply the statute to respondent's testimony would subvert the congressional purpose in its passage. We agree.
>
> "We need not set out the history of the statute in detail. It should be noted, however, that its function was to provide an immunity in subsequent criminal proceedings to witnesses before congressional committees, in return for which it was thought that witnesses could be compelled to give self-incriminating testimony. That purpose was effectively nullified in 1892 by this Court's decision in Counselman v. Hitch-

cock, 142 U. S. 547, 35 L. Ed. 1110, 12 S. Ct. 195, holding that Rev. Stat. §860, a statute identical in all material respects with Rev. Stat. §859, was not sufficient substitute for the constitutional privilege of refusing to answer self-incriminating questions. Under that decision, a witness who is offered only the partial protection of a statute such as §§859 and 860 — that his testimony may not be used against him in subsequent criminal proceedings — rather than complete immunity from prosecution for any act concerning which he testifies may claim his privilege and remain silent with impunity."

It is, of course, true that Title 2 U. S. C. A. Sec. 192 provides that if any person summoned as a witness to give testimony before any Committee of either House of Congress wilfully refuses to answer any question pertinent to the matter under inquiry, he shall be guilty of a misdemeanor, and Petitioner has relied upon this statute in defense of his argument that he was forced to testify before the Committee. This is patently not correct in view of the fact that Adams, although advised by counsel at the time refused to answer certain questions which were put to him, on the grounds of his constitutional immunity against self-incrimination, but answered numerous other questions freely and voluntarily, and now takes the position that such voluntary statements and admissions may not be used against him in the courts of Maryland. In the case of *United States v. Jaffee*, 98 Fed. Supp. 191, the defendant was charged with the violation of Section 192, *supra*, in that he refused to answer certain questions before the Committee on Foreign Relations of the United States Senate, on the ground that the answers would tend to incriminate him. The Court concluded "that the defendant had reasonable ground for apprehension that the testimony sought from him would expose him to prosecution for a conviction of a crime against the United States and having claimed the

privilege granted to him by the Fifth Amendment to the Constitution, he should not have been required to give such testimony". The Court felt that Section 3486, *supra*, did not give complete immunity in such a case, and relied upon the case of *Counselman v. Hitchcock, supra,* which it quoted as follows (p. 196 of 98 Fed. Supp.):

> "* * * It follows that any evidence which might have been obtained from Counselman by means of his examination before the grand jury could not be given in evidence nor used against him or his property in any court of the United States, in any criminal proceeding, or for the enforcement of any penalty or forfeiture. This, of course, protected him against the use of his testimony against him or his property in any prosecution against him or his property, in any criminal proceeding, in a court of the United States. *But it had only that effect. It could not, and would not, prevent the use of his testimony to search out other testimony to be used in evidence against him or his property, in a criminal proceeding in such court. It could not prevent the obtaining and the use of witnesses and evidence which should be attributable directly to the testimony he might give under compulsion, and on which he might be convicted, when otherwise, and if he had refused to answer, he could not possibly have been convicted.*
>
> *"The constitutional provision distinctly declares that a person shall not 'be compelled in any criminal case to be a witness against himself', and the protection of section 860 is not co-extensive with the constitutional provision."*

See also *United States v. Ralley*, 96 Fed. Supp. 495, and the above was considered by the Court of Appeals of Maryland in its opinion which may be found at page 101 of the Record in this case. The court also took occasion to note that there was sufficient evidence in this case to prove that Adams conspired to violate the lottery laws within the period of limitations, stating (at p. 103):

"If there were any doubt on this contention, it was removed by the introduction in evidence of the testimony that appellant gave before the United States Senate Crime Investigating Committee in Washington. He testified before that Committee that he did not give up the numbers business until May, 1950. He admitted that he had about ten men who brought in the money, and that he had a bookkeper who assisted him with the records.

"Appellant strongly objected to the introduction of the confession which he made before the Senate Committee. He argued that since he was subpoenaed to appear before that Committee, and since he could have been charged with a misdemeanor if he failed to appear, his confession was given under compulsion.

"The Bill of Rights, which applies only to the Federal Government, contains guaranties against oppressive proceedings in criminal prosecutions. The Fifth Amendment contains the Anglo-American concept of justice that no person shall be compelled in any criminal case to be a witness against himself. Likewise, Article 22 of the Maryland Declaration of Rights declares: 'That no man ought to be compelled to give evidence against himself in a criminal case.'

"In Henze v. State, 154 Md. 332, 347, 140 A. 218, the Court of Appeals held that the right of an accused person not to be compelled to give evidence against himself, as guaranteed by the Maryland Declaration of Rights, is not violated by the introduction in evidence of a confession which he voluntarily gave at a former trial for the same offense. The admissibility of testimony given at a former trial depends upon whether or not it was voluntary. To be admissible it must be voluntary, and where there is no evidence to the contrary it will be presumed that the testimony was voluntary."

It is respectfully submitted, therefore, that Petitioner, under the Federal decisions, could have asserted the privi-

lege of self-incrimination, and by not doing so, has effectively waived that privilege; that his testimony before the Senate Committee which was admitted into evidence against him in the conspiracy case was given willingly and voluntarily, for whatever reason he may have had, without relying upon the constitutional immunity which is provided him by law.

(2) It is elementary that the States have the power to establish rules of practice and procedure in State courts. It is likewise elementary that under the Tenth Amendment to the Constitution of the United States, the Federal Government has only those powers which are specifically enumerated, and such others as may be implied from a "fair construction of the whole instrument". *McCulloch v. Maryland,* 4 Wheat. 316, 4 L. Ed. 579. There is nothing in the Constitution of the United States which expressly, or by implication, authorizes the Federal Government either by Act of Congress, or by judicial decision, to prescribe rules of evidence binding upon courts of the several States. It is conceivable that a rule of evidence as applied by a State court might violate the Due Process Clause of the Fourteenth Amendment to the Federal Constitution, but such a problem is not here presented.

The case of *People v. Kelley,* ..... Cal. ....., 122 Pac. 2d 655, discussed the power reserved to the States in matters of court procedure as follows:

> "Appellant contends that the Court committed prejudicial error in allowing police officers to testify to the contents of messages which came to the apartment over the telephone after they had gained entrance thereto. This contention is based upon the inhibitions of Sec. 605 of the Federal Communications Act of 1934, Title 47, U. S. C. A., which provides that *no person* not author-

ized by the sender shall intercept or divulge the contents of any communications to any person, and no person not being entitled thereto shall receive any intercepted communications by wire or radio. *Appellant proceeds upon the theory that an Act of Congress has the sanctity of a Congressional provision. This is so fundamentally erroneous as to make a refutation there of supererogation. Even though the Act of Congress is valid within the orbit of the activities of that department of the Government, the operation of the statute can affect only those subjects over which the central Government has jurisdiction.* * * * In matters involving solely procedure State Courts are not affected by Acts of Congress. Subject only to the limitations of the Federal Constitution, the State may establish its own procedure. * * * The purpose of the framers of the Federal Constitution was to establish a government which should be supreme within its own sphere of action, but which should not usurp any of the powers reserved to the States. *McCulloch v. Maryland,* 4 Wheat. 316, 4 L. Ed. 579. Accordingly, the state may regulate its own court procedure in accordance with the genius of its own laws and institutions, so long as it does not offend some vital principle, the protection and operation of which has been made a part of the organic law of the union. * * * In truth, the power of a state to regulate its own court procedure is substantially unrestricted by any power it has granted. *Jordan v. Massachusetts,* 225 U. S. 167." (Emphasis supplied.)

The case of *Salsburg v. State,* .... Md. ...., 94 A. 2d 280, 285, did not involve the question of the power of Congress to regulate procedure in State courts, but it did recognize that a State has the "right to control procedure in its courts (and) has the power to regulate the admissibility of evidence".

Petitioner relies upon the case of *Brown v. Walker,* 161 U. S. 591, 40 L. Ed. 819, for the proposition that Congress

has the power to control the admission of evidence in State courts under a statute granting immunity. There a statute which had been held not to furnish complete immunity in *Counselman v. Hitchcock, supra,* was amended so as to grant the complete immunity required by the *Counselman* case, and, as amended, provided that "no person shall be subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify, or produce evidence, documentary or otherwise, before said commission, or in obedience to its subpoena, or either of them or in any such case or proceeding". At the time of the *Counselman* decision, the statute simply provided immunity from criminal prosecutions. The question before the court in the case of *Brown v. Walker, supra,* was therefore whether the statute, as amended, furnished complete immunity so that a person who insisted upon his right to silence in the face of the statute could be held in contempt. The Supreme Court held that the statute furnished complete immunity so that a person could be compelled to testify and, in doing so, not be denied his rights under the Fifth Amendment to the Constitution of the United States. The contention was made by the defendant that Congress could not guarantee his immunity from a State prosecution. The majority opinion disposed of this contention as follows, at page 606 of 161 U. S.:

> "It is argued in this connection that, while the witness is granted immunity from prosecution by the Federal government, he does not obtain such immunity against prosecution in the state courts. We are unable to appreciate the force of this suggestion."

Four Judges dissented in two opinions from the majority opinion in the *Brown* case. Three of the dissenters joined in one opinion written by Justice Shiras, who said at page 623 of 161 U. S.:

> "It is indeed claimed that the provisions under consideration would extend to the state courts and might be relied on therein as an answer to such an indictment. We are unable to accede to such a suggestion. As Congress cannot create state courts, nor establish the ordinary rules of property and of contracts, nor denounce penalties for crimes and offenses against the states, so it cannot prescribe rules of proceeding for the State courts."

Justice Shiras then went on to show that the cases relied upon by the majority opinion as sustaining the right of Congress to determine procedure in State courts alike had dealt with statutes which were enacted under the War Power Clause of the Federal Constitution, and which dealt with the rebellious States at the end of the Civil War.

Petitioner has emphasized the dissenting opinion in the *Brown* case because it is felt that the later cases which have relied upon that case have leaned to the minority opinion on the question of whether Congress may require a State court to give effect to congressional immunity. In the case of *Hale v. Henkel*, 201 U. S. 43, 50 L. Ed. 652, Hale refused to testify relative to a suspected violation of the Sherman Act by the corporation by which he was employed. He was held in contempt by a Circuit Judge. The Supreme Court held that the statute granted a complete immunity as distinguished from the partial immunity granted by Title 18 U. S. C. A., Section 3486. Hale contended that the statute did not grant immunity from prosecution in a State court. The Supreme Court answered this contention, as follows, at page 68 of 201 U. S.:

> "The further suggestion that the statute offers no immunity from prosecution in the state courts was also fully considered in *Brown v. Walker*, and held to be no answer. The converse of this was also decided in *Jack*

v. Kansas, 199 U. S. 372, ante, 234, 26 Sup. Ct. Rep. 73, — namely, that the fact that an immunity granted to a witness under a state statute would not prevent a prosecution of such witness for a violation of a Federal statute did not invalidate such statute under the 14th Amendment. It was held both by this court and by the supreme court of Kansas that the possibility that information given by the witness might be used under the Federal act did not operate as a reason for permitting the witness to refuse to answer, and that a danger so unsubstantial and remote did not impair the legal immunity. Indeed, if the argument were a sound one it might be carried still further and held to apply not only to state prosecutions within the same jurisdiction, but to prosecutions under the criminal laws of other states to which the witness might have subjected himself. The question has been fully considered in England, and the conclusion reached that *the only danger to be considered is one arising within the same jurisdiction and under the same sovereignty.*" (Emphasis supplied.)

This holding is certainly a departure from the very affirmative language employed in the majority opinion in the case of *Brown v. Walker, supra.*

In the case of *United States v. Murdock,* 284 U. S. 141, 76 L. Ed. 210, the traverser was summoned to appear before an authorized revenue agent to answer certain questions relative to deductions made in his income tax. He refused to do so on the ground that he would incriminate himself under State law. He was held in contempt under a statute which made the failure to supply such information a misdemeanor. On appeal, the Supreme Court held that the privilege of silence is waived unless invoked, and that the traverser had waived the privilege for purposes of Federal prosecution, inasmuch as he based his claim of self-incrimination on the fear of prosecution under State law. The

Court held that such a claim was not within the self-incrimination provision of the Fifth Amendment to the Constitution of the United States, as follows, at page 149 of 284 U. S.:

> "The plea does not rest upon any claim that the inquiries were being made to discover evidence of crime against state law. Nothing of state concern was involved. The investigation was under federal law in respect of federal matters. The information sought was appropriate to enable the Bureau to ascertain whether appellee had in fact made deductible payments in each year as stated in his return, and also to determine the tax liability of the recipients. Investigations for federal purposes may not be prevented by matters depending upon state law. Const. art. 6, Sec. 2. The English rule of evidence against compulsory self-incrimination, on which historically that contained in the 5th Amendment rests, does not protect witnesses against disclosing offenses in violation of the laws of another country. *Two Sicilies v. Willcox,* 7 State Tr. N. S. 1050, 1068; *Reg. v. Boyes,* 1 Best. & S. 311, 330, 121 Eng. Reprint, 730. This court has held that immunity against state prosecution is not essential to the validity of federal statutes declaring that a witness shall not be excused from giving evidence on the ground that it will incriminate him, and also that the lack of state power to give witnesses protection against federal prosecution does not defeat a state immunity statute. The principle established is that full and complete immunity against prosecution by the government compelling the witness to answer is equivalent to the protection furnished by the rule against compulsory self-incrimination. *Counselman v. Hitchcock,* 142 U. S. 547, 35 L. ed. 1110, 3 Inters. Com. Rep. 816, 12 S. Ct. 195; *Brown v. Walker,* 161 U. S. 591, 606, 40 L. ed. 819, 824, 5 Inters. Com. Rep. 369, 16 S. Ct. 644; *Jack v. Kansas,* 199 U. S. 372, 381, 50 L. ed. 234, 236, 26 S. Ct. 73, 4 Ann. Cas. 689; *Hale v. Henkel,* 201 U. S. 43, 68, 50 L. ed. 652, 663, 26 S. Ct. 370. * * * Federal criminal procedure is governed not

by state practice but by federal statutes and decisions of the federal courts."

A recent case which relied upon the case of *Brown v. Walker, supra,* is that of *Feldman v. United States Oil & Ref. Co.,* 322 U. S. 487, 88 L. Ed. 1408. There, the petitioner, a judgment debtor, was called a witness in a Court of New York and gave testimony under a New York immunity statute which provided that a debtor might not be excused from testifying because of self-incrimination, but that his testimony could not be used in a subsequent criminal proceeding against him. This testimony was later used in a Federal court on a charge of using the mails to defraud. He did not testify in the Federal court and was convicted upon the testimony given in the New York proceedings. The question before the Supreme Court on a writ of certiorari was whether the admission of testimony in a Federal prosecution was a denial of the petitioner's rights under the Fifth Amendment where the source of the testimony was a proceeding in a State court in which immunity had been granted under a State statute. The Supreme Court answered this question in the negative and said:

"* * * While the point has not been formally decided, we deem the answer to be controlled by a long series of decisions expressing basic principles of our federation.

"* * * for more than one hundred years, ever since *Barron v. Baltimore,* 7 Pet. (U. S.) 243, 8 L. ed. 672, one of the settled principles of our Constitution has been that these Amendments protect only against invasion of civil liberties by the Government whose conduct they alone limit. *Brown v. Walker,* 161 U. S. 591, 606, 40 L. ed. 819, 824, 16 S. Ct. 644, 5 Inters. Com. Rep. 369; *Jack v. Kansas,* 199 U. S. 372, 380, 50 L. ed. 234, 236, 26 S. Ct. 73, 4 Ann. Cas. 689; *Twining v. New Jersey,* 211 U. S. 78, 53 L. ed. 97, 29 S. Ct. 14. Conversely, a State cannot by operating within its constitutional powers

restrict the operations of the National Government within its sphere. *The distinctive operations of the two governments within their respective spheres is basic to our federal constitutional system, howsoever complicated and difficult the practical accommodations to it may be.* * * *

"This principle has governed a series of decisions which for all practical purposes rule the present case. When this Court for the first time sustained an immunity statute as adequate, it rejected the argument that because federal immunity could not bar use in a state prosecution of testimony compelled in a federal court, the immunity falls short of the constitutional requirement. *Brown v. Walker, supra,* (161 U. S. at 606, 40 L. ed. 824, 16 S. Ct. 644, 5 Inters. Com. Rep. 369). And when the reverse claim was made as to a state immunity statute, that a disclosure compelled in a state court could not assure immunity in a federal court, the argument was again rejected because, 'The state (anti-trust) statute could not, of course, prevent a prosecution of the same party under the United States (anti-trust) statute, and it could not prevent the testimony given by the party in the State proceeding from being used against the same person in a Federal Court for a violation of the Federal statute, if it could be imagined that such prosecution would be instituted under such circumstances.' *Jack v. Kansas, supra,* (199 U. S. at 380, 50 L. ed. 236, 26 S. Ct. 73, 4 Ann. Cas. 689).

"* * * Certainly it is not for New York to determine when, because it suits its local policy to employ testimonial compulsion, it will relieve from federal prosecution 'for or on account of any transaction, matter or thing concerning which' a New York court may have seen fit to require testimony. Such would be the practical result of sustaining petitioner's claim. The immunity from prosecution, like the privilege against testifying which it supplants, pertains to a prosecution in the same jurisdiction. Otherwise the criminal law of the United States would be at the hazard of careless-

> ness or connivance in some petty civil litigation in any state court, quite beyond the reach even of the most alert watchfulness by law officers of the Government. See Nardone v. United States, 308 U. S. 338, 84 L. ed. 307, 60 S. Ct. 266." (Emphasis supplied.)

In light of these decisions, it is obvious that the majority opinion in the case of *Brown v. Walker, supra,* has not been interpreted to mean that the Federal Government has the power to impose a rule of evidence upon a State court. To the contrary these later cases apparently assume that Congress has not such power and hold that the lack of such power does not make ineffective a Federal statute which grants *complete immunity from all prosecutions and forfeitures at the federal level* which might arise from the information secured under the immunity.

(3) Even assuming that Congress has the power to prescribe a rule of evidence to be applied in a State court, Section 3486 of Title 18 U. S. C. A. does not clearly manifest such an intention which is required by law. An excellent example analogous to the present situation is to be noted in the Federal Communications Act of 1943, 47 U. S. C. A., Section 605, which provides in part:

> "* * * *no person* not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication *to any person* * * *."

This statute has been construed by the Supreme Court as barring in Federal prosecutions the admission of evidence secured in a manner prohibited by the statute. *Nardone v. U. S.,* 302 U. S. 379, 82 L. Ed. 314; *Weiss v. United States,* 308 U. S. 321, 84 L. Ed. 298. However, Section 605 "does not apply to exclude such communications from evi-

dence in State courts". *Schwartz v. Texas,* 97 L. Ed. (Adv. Shts.) 157, 160; *Bratburd v. State,* ..... Md. ....., 88 A. 2d 446, 449; *McGuire v. State,* ..... Md. ....., 92 A. 2d 582, 584.

In the case of *Schwartz v. Texas, supra,* the Supreme Court refused to decide whether Congress has the power "to impose a rule of evidence on the state courts". Rather, it decided that the provision in Section 605 which is above set forth, did not manifest an intent by Congress to impose such a rule, and said:

> "We are dealing here only with the application of a federal statute to state proceedings. Without deciding, but assuming for the purposes of this case, that the telephone communications were intercepted without being authorized by the sender within the meaning of the Act, the question we have is whether these communications are barred by the federal statute, sec. 605, from use as evidence in a criminal proceeding in a state court.
>
> "* * * *If Congress is authorized to act in a field, it should manifest its intention clearly.* It will not be presumed that a federal statute was intended to supersede the exercise of the power of the state unless there is a clear manifestation of intention to do so. The exercise of federal supremacy is not lightly to be presumed.
>
> "The principle thus applicable has been frequently stated. It is that the Congress may circumscribe its regulation and occupy a limited field, and that the intention to supersede the exercise by the State of its authority as to matters not covered by the federal legislation is not to be implied unless the Act of Congress fairly interpreted is in conflict with the law of the State. Atchison, T. & S. F. R. Co. v. Railroad Commission, 283 U. S. 380, 392, 393, 75 L. Ed. 1128, 1136, 1137, 51 S. Ct. 553. See Savage v. Jones, 225 U. S. 501, 533, 56 L. Ed. 1182, 1194, 32 S. Ct. 715.
>
> *"It should never be held that Congress intends to supersede or by its legislation suspend the exercise of*

> *the police powers of the States, even when it may do so, unless its purpose to effect that result is clearly manifested.* Reid v. Colorado, 187 U. S. 137, 148, 47 L. Ed. 108, 114, 23 S. Ct. 92." (Emphasis supplied.)

It is submitted that there is a close analogy between Section 3486, *supra,* and the Federal Communications Act of 1943. Both contain provisions which would appear to be all inclusive. Section 3486 condemns the use of testimony (which is given before a Committee of Congress) *"in any court"*. Section 605, *supra,* provides that "no person" shall divulge intercepted communications "to any person". It is submitted that under the holding in *Schwartz v. Texas, supra,* Congress has not clearly manifested its intention that the immunity granted by Section 3486 is to be applied in State courts. It is to be presumed that when Congress employed the term "in any Court", the reference was to those courts over which Congress has traditionally had power. If Congress intends to attempt an extension of its traditional powers, the reference must be more specific.

(4) Petitioner contends that the testimony given by him before the Senate Crime Committee was inadmissible because it was in the nature of an involuntary confession given under compulsion, and as such is a violation of the Due Process Clause, in that it amounts to his being forced to give evidence against himself in a criminal case. This particular point was not raised in the trial court, but the objection was taken to the admissibility of the testimony on the basis that the Federal statute granted a complete immunity.

The testimony itself before the Senate Committee indicates that he was not under any compulsion to testify as he himself refused to answer certain questions and was

not forced to do so by the Committee, nor were any powers or penalties invoked as a result of his refusal to so testify.

There is no question in this case concerning obtaining a statement or confession by improper means. At the time he testified before the Senate Crime Committee, the matter under investigation did not involve any criminal charge against the Petitioner, and the matter under investigation was a Federal one. This Court, in the case of *Feldman v. United States Oil and Refining Co., supra,* ruled on an analogous contention as follows, at page 492 of 322 U. S.:

> "* * * The Government here is not seeking to benefit by evidence which it extorted. It had no power either to compel testimony in the state court or to forestall such disclosure as a means of avoiding possible interference with the enforcement of the federal penal code. Whether testimony in a New York court should be compelled in exchange for immunity from prosecution under the penal laws of New York is for New York to say. For what purposes the United States may deem the disclosure of testimony more important than prosecution for federal crimes is for Congress to say."

For Congress to indiscriminately allow evil-doers to appear before its Committees and unburden themselves by means of long recitals of previous misdeeds as the price of immunity to any prosecution arising out of those facts in any State would be a reduction to absurdity.

Petitioner has argued in his Brief in support of his Petition for the Writ of Certiorari, as stated, that the Court of Appeals has placed complete reliance in the case of *May v. United States,* 175 Fed. 2d 994. There is, of course, a distinction between the two cases. However, we do think that this case should have had substantial persuasive effect upon the Maryland court in so far as it determines that testi-

mony given voluntarily may be used against a person who testified before a Congressional Committee under proper interpretation of Section 3486 of Title 18 U. S. C. A. Exactly the same major decision was reached by this Court in the case of *United States v. Bryan,* 339 U. S. 323, 94 L. Ed. 884, in which the Court held that it would be silly to use the terminology of an Act of Congress to defeat the purpose which Congress intended by the Act. The case of *Brown v. Walker,* 161 U. S. 591, 40 L. Ed. 819, relied on by the Petitioner, is not applicable in that it involves an immunity statute in the Interstate Commerce Act, which grants an absolute immunity and is hence different from the statute involved in the present case.

Petitioner further argues that he has been convicted of an offense not cognizable under the Maryland law. This contention is distinctly untenable as the courts of Maryland have long held that conspiracy to violate the lottery laws may not only be prosecuted, but is a separate and distinct offense from the substantive crime of violating the lottery laws themselves. *Scarlett v. State,* ..... Md. ....., 93 A. 2d 753.

It is further urged that the court below has not determined a Federal question to be reviewed by this Honorable Court by way of certiorari; the decision of the State court has no effect on any prior ruling of the Supreme Court, nor has the decision of the State court infringed upon any provision of the Federal Constitution, and the evidence in the case was more than sufficient to prove the commission of the offense with which the Petitioner was charged beyond all reasonable doubt, with or without the admission of the testimony which he gave before the Senate Investigating Committee.

CONCLUSION

It is therefore respectfully submitted, for the reasons stated herein, that the Petitioner has been denied no right under the Constitution of the United States or any statute passed pursuant thereto, and that the Petition should therefore be denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 271

WILLIAM ADAMS,

Petitioner,

VS.

STATE OF MARYLAND,

Respondent.

ON A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MARYLAND

BRIEF FOR THE RESPONDENT

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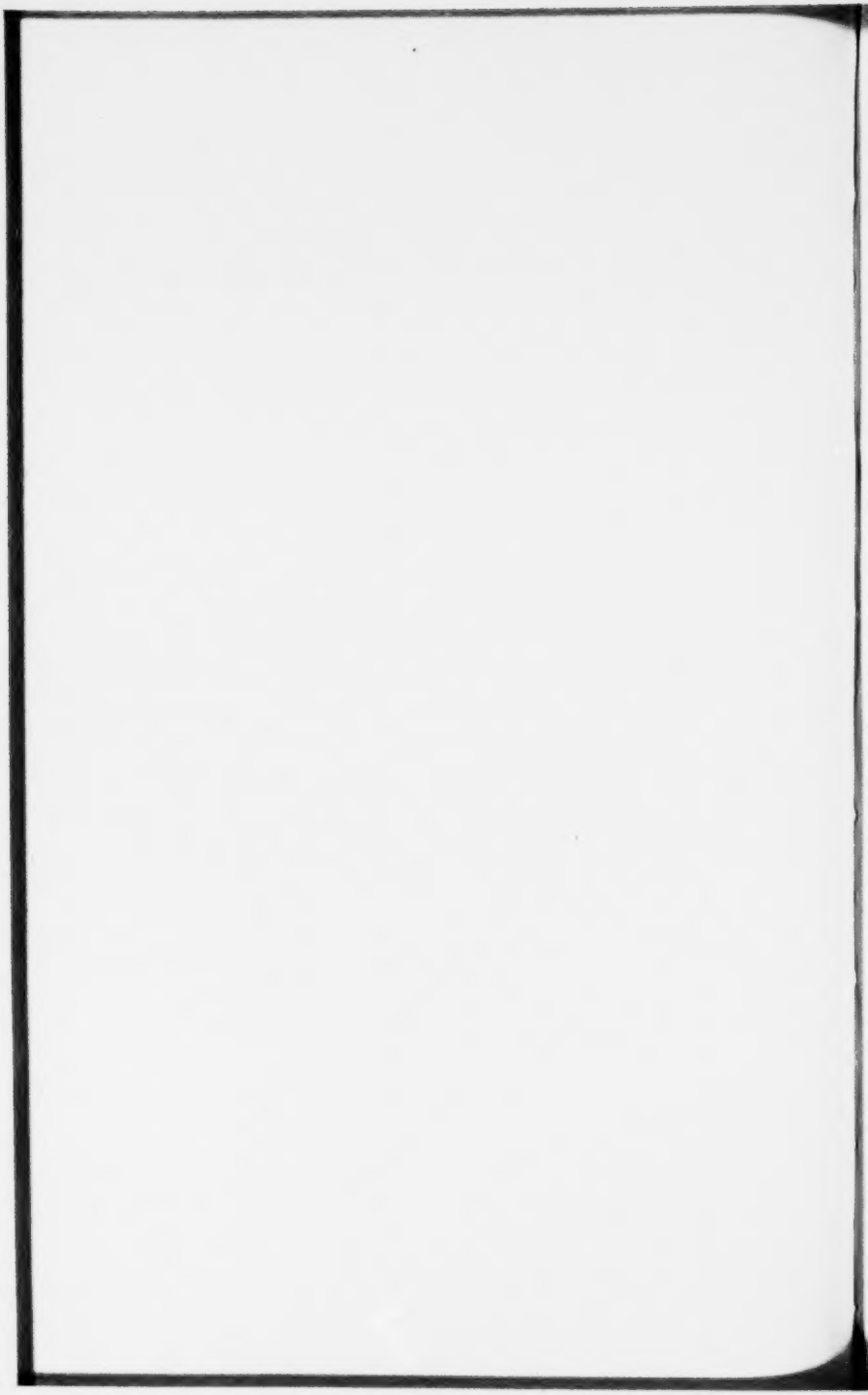

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BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the Court of Appeals of Maryland is reported at 97 A. 2d 281 (Record p. 91).

QUESTION PRESENTED

The sole question presented here is whether certain testimony given by Petitioner before a Senate Committee was admissible at his trial on a charge of conspiracy to violate the lottery laws of the State of Maryland, or whether the same was inadmissible under the provisions

of Section 3486 of Title 18 U. S. C. A. (which statute, and other statutes of interest, may be found on page 31 of Petitioner's Appendix).

STATEMENT OF THE CASE

Respondent adopts in general the Statement of the Case made by Petitioner in his Brief, except such parts thereof as are mere conclusions of Petitioner's counsel.

In addition to the above, it is to be noted that on pages 63 and 64 of the Record, the Petitioner refused to answer certain questions because of self-incrimination, and was told by Senator Hunt that there was no way he could be compelled to answer, and that Petitioner was advised by counsel at the time of his testimony.

SUMMARY OF ARGUMENT

The question presented in this case breaks down, for purposes of argument, into three points, namely:

1. Does the Congress have power by means of the statute (Section 3486 of Title 18 U. S. C. A.) to make rules concerning the admissibility of evidence in criminal prosecutions in courts of the State of Maryland?

2. Assuming, for purposes of argument, that Congress does have such power, did it intend by the statute involved to so limit the courts of the State of Maryland, or was it intended only to apply to criminal prosecutions in the courts of the United States? and

3. Did the Petitioner waive the privilege of the statute by testifying voluntarily as to the facts which were subsequently used against him?

Respondent contends that Congress does not have power under the Constitution to make rules governing the admission of evidence in the courts of the several States, and further that even if Congress did have such power, it did not, by the statute involved herein, intend that the privilege expressed in Section 3486 of Title 18 U. S. C. A. should have application to criminal prosecutions in State courts. Further, Respondent contends that in any event, the Petitioner waived the privilege which may or may not have been afforded him by the statute by testifying voluntarily in the face of his known privilege of refusing to testify upon the grounds of self-incrimination afforded him by the Constitution.

ARGUMENT

I.

The Congress of the United States does not have the power, by statute or otherwise, to make rules governing the admission of evidence in the Courts of the State of Maryland.

It is elementary that the States have the power to establish rules of practice and procedure in State courts. It is also true that questions involving the admissibility of evidence are to be governed by the law of the forum which, in the case at bar, was that of the State of Maryland. It has been said by Professor Beale that this rule "is so obviously necessary to an efficient disposition of the business of the court that cases in which counsel have seriously contended that any other rule should be adopted are exceedingly rare." (Treatise on the Conflict of Laws, Beale, par. 597.1; Am. Jur., Vol. 20, Evidence, Secs. 5 and 8.)

It being admitted that the law of the forum must control questions of admissibility of evidence, the question re-

mains whether or not the contents of the statute (U. S. C. A. Title 18, Section 3486) is part of the law of the forum in the State of Maryland. In other words, does Congress have the right or the power to pass statutes affecting the rules of evidence which become part of the law of the forum in a State of the Union under the "Supreme Law of the Land" language of Article VI, Clause 2 of the Constitution of the United States? It has been flatly held in at least some cases in State courts of last resort that the Federal Congress does not have such authority, although, as Professor Beale points out, there has seldom been an occasion upon which such a decision has been necessary. *Noble v. Bank,* 89 N. W. 400; *Sulpho Saline Co. v. Allen,* 92 N. W. 354; *Savings Bank v. Cronin,* 114 N. W. 159.

In the above series of cases, all of which were decided by the Supreme Court of the State of Nebraska, it was held, affirmed and reaffirmed that the Federal Congress has no authority to make rules governing the admission of evidence in the courts of that State, or to determine what shall be competent or incompetent, admissible or inadmissible. In the case of *Erickson v. Hogan,* 98 N. Y. Supp. 2d 859, a nisi prius case, the court did state that Title 18, Section 3486 U. S. C. A. did apply to State courts. However, this was only dicta, as that case was determined upon the propriety of the action brought as an injunction proceeding when the question should have been raised upon a motion to quash.

Under the Tenth Amendment to the Constitution of the United States, the Federal government has only those powers which are specifically enumerated, and such others as may be implied from a fair construction of the whole instrument. *McCulloch v. Maryland,* 4 Wheat. 316, 4 L. Ed. 579. There is nothing in the Constitution which expressly,

or by implication, authorizes the Federal government either by Act of Congress or judicial decision to prescribe rules of evidence which may be binding upon the procedure of the courts of the several States. It is, of course, conceivable that a rule of evidence as applied by a State court might violate the due process clause of the Fourteenth Amendment to the Constitution, but such a problem is not here presented, and, as a matter of fact, the original statute, as pointed out in Petitioner's Brief at page 8, was passed in 1857, long before the ratification of the Fourteenth Amendment, and while, of course, it must be conceded that laws of the United States made *in pursuance of the Constitution* are the Supreme Law of the Land, nevertheless, it is Respondent's contention that an Act of Congress attempting to establish or amend rules of evidence in use in courts of the several States cannot be made in pursuance of the constitutional powers of Congress, even if Congress so intended. That this exact question has not been determined by this Court is evident from the language used in the case of *Schwartz v. Texas,* 97 L. Ed. 157 (Adv. Sh.), at page 161, in which it was said, with reference to Section 605 of the Federal Communications Act, Title 47 U. S. C. A.:

> "We hold that §605 applies only to the exclusion in federal court proceedings of evidence obtained and sought to be divulged in violation thereof; it does not exclude such evidence in state court proceedings. Since we do not believe that Congress intended to impose a rule of evidence on the state courts, we do not decide whether it has the power to do so."

Respondent cites Section 8 of Article I of the Constitution giving Congress authority "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this

Constitution in the government of the United States, or in any department or officer thereof." The doctrine of inferred powers under the so-called "necessary and proper clause" must be considered in connection with the Tenth Amendment of the Constitution which, of course, provides "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." It is respectfully urged that there is nothing in the Constitution which authorizes Congress under its powers, implied or otherwise, to make rules of evidence for State courts. Justice Chase in the early case of *Calder v. Bull*, 3 Dall. 386, 1 L. Ed. 648, recognized that the administration of justice was one of the powers reserved to the States, when he said:

> "It appears to me a self-evident proposition, that the several state legislatures retain all the powers of legislation, delegated to them by the state constitutions; which are not expressly taken away by the constitution of the United States. The establishing courts of justice, the appointment of judges, and the making regulations for the administration of justice, within each state, according to its laws, on all subjects not entrusted to the federal government, appears to me to be the peculiar and exclusive province, and duty of the state legislatures."

See also *People v. Kelley*, (Cal.) 122 Pac. 2d 655, which said, among other things:

> "* * * In matters involving solely procedure State Courts are not affected by Acts of Congress. Subject only to the limitations of the Federal Constitution, the State may establish its own procedure."

See also *Salsburg v. State* (Md.) 94 A. 2d 280.

It is to be noted that a statute, such as the one here involved, which concerns a rule of evidence, is completely

different from a statute granting immunity to prosecution to a certain class of citizens. Nor is it denied that Congress has the right to determine rules of evidence for the Federal courts under its jurisdiction. But it is not for one sovereignty to impinge upon another, and as was said by this Court in the case of *Feldman v. United States Oil & Ref. Co.*, 322 U. S. 487, 88 L. Ed. 1408:

> "* * * Certainly it is not for New York to determine when, because it suits its local policy to employ testimonial compulsion, it will relieve from federal prosecution * * *. The immunity from prosecution, like the privilege against testifying which it supplants, pertains to a prosecution in the same jurisdiction. Otherwise the criminal law of the United States would be at the hazard of carelessness or connivance in some petty civil litigation in any state court, quite beyond the reach even of the most alert watchfulness by law officers of the Government."

It is respectfully contended that the reverse of this proposition is also true, and if the power to tax be the power to destroy, the unlimited power to make rules of evidence could have no less an effect upon every court in every State, and Congress could supersede the right of the courts of the several States to prosecute crimes within their respective jurisdictions by dropping an iron curtain around all testimony given before Congressional Investigating Committees, or any other arm or branch of the Federal government, which would be certainly not only an end not to be desired, but one which would be inconceivable under our Constitution.

II.

Congress did not intend, by Section 3486 of Title 18 U. S. C. A,. to limit the introduction of evidence before Courts of the State of Maryland.

It has been stated above that, while this Honorable Court has never determined the question of the power of Congress to exclude evidence in State court proceedings, it has, on numerous occasions, construed the intent of Congress in connection with analogous statutes. *Schwartz v. Texas*, 97 L. Ed. 157 (Adv. Sh.); *Bratburd v. State* (Md.) 88 A. 2d 446; *McGuire v. State* (Md.) 92 A. 2d 582. In the case of *Schwartz v. Texas, supra,* this Court considered Section 605 of Title 47 U. S. C. A., part of the Federal Communications Act of 1943, which provides in part, as follows:

> "* * * *no person* not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication *to any person* * * *."

In determining that case, this Court held that this did not manifest an intent of Congress to impose a rule of evidence upon courts of the several States, and said:

> "We are dealing here only with the application of a federal statute to state proceedings. Without deciding, but assuming for the purposes of this case, that the telephone communications were intercepted without being authorized by the sender within the meaning of the Act, the question we have is whether these communications are barred by the federal statute, sec. 605, from use as evidence in a criminal proceeding in a state court.
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> "* * * *If Congress is authorized to act in a field, it should manifest its intention clearly.* It will not be presumed that a federal statute was intended to super-

sede the exercise of the power of the state unless there is a clear manifestation or intention to do so. The exercise of federal supremacy is not lightly to be presumed.

"The principle thus applicable has been frequently stated. It is that the Congress may circumscribe its regulation and occupy a limited field, and that the intention to supersede the exercise by the State of its authority as to matters not covered by the federal legislation is not to be implied unless the Act of Congress fairly interpreted is in conflict with the law of the State. Atchison, T. & S. F. R. Co. v. Railroad Commission, 293 U. S. 380, 392, 393, 75 L. Ed. 1128, 1136, 1137, 51 S. Ct. 553. See Savage v. Jones, 225 U. S. 501, 533, 56 L. Ed. 1182, 1194, 32 S. Ct. 715.

"It should never be held that Congress intends to supersede or by its legislation suspend the exercise of the police powers of the States, even when it may do so, unless its purpose to effect that result is clearly manifested. Reid v. Colorado, 187 U. S. 137, 148, 47 L. Ed. 108, 114, 23 S. Ct. 92." (Emphasis supplied.)

It is submitted that there is a close analogy between Section 3486, *supra,* and the Federal Communications Act of 1943. Both contain provisions which would appear to be all inclusive. Section 3486 condemns the use of testimony (which is given before a Committee of Congress) *"in any court"*. Section 605, *supra,* provides that "no person" shall divulge intercepted communications "to any person". It is submitted that under the holding in *Schwartz v. Texas, supra,* Congress has not clearly manifested its intention that the immunity granted by Section 3486 is to be applied in State courts. It is to be presumed that when Congress employed the term "in any Court", the reference was to those courts over which Congress has traditionally had power. It is to be noted that this statute does not at-

tempt to set up a complete immunity to prosecution in connection with any subject testified to, as is the case with some other statutes, but simply applies a rule of evidence and certainly Congress cannot have intended to apply rules of evidence to any courts other than those within its own jurisdiction and purview.

It is not doubted that Congress has the power to investigate and secure information which it needs in the public interest, and it undoubtedly has the right to apply complete immunity to a witness called before it in the pursuit of such purpose, and as was determined by this Court in the case of *United States v. Bryan*, 339 U. S. 323, 94 L. Ed. 884, it would be silly to use the terminology of an Act of Congress to defeat the purpose that Congress intended by the Act.

Petitioner's argument with respect to the history of Section 3486, and in particular statements taken from the Debate in 1857 on pages 10 and 11 of his Brief, indicate clearly that at least one of the Congressmen had in mind that this statute would grant complete immunity to prosecution which has, of course, since been determined by this Court not to be the case. *Counselman v. Hitchcock*, 142 U. S. 547, 35 L. Ed. 1110; *United States v. Bryan*, 339 U. S. 323, 94 L. Ed. 884, where this Court said at pages 893 and 894:

> "Respondent also contended at the trial that the court erred in permitting the Government to read to the jury the testimony she had given before the House Committee when called upon to produce the records. She relies upon Rev. Stat. §859, now codified in §3486 of title 18 U. S. C. A., F. C. A. title 18, §3486, which provides that 'No testimony given by a witness before * * * any committee of either House * * * shall be used as evidence in any criminal proceeding against him in

any court, except in a prosecution for perjury committed in giving such testimony * * *.' Admittedly her testimony relative to production of the books comes within the literal language of the statute; but the trial court thought that to apply the statute to respondent's testimony would subvert the congressional purpose in its passage. We agree.

"We need not set out the history of the statute in detail. It should be noted, however, that its function was to provide an immunity in subsequent criminal proceedings to witnesses before congressional committees, in return for which it was thought that witnesses could be compelled to give self-incriminating testimony. That purpose was effectively nullified in 1892 by this Court's decision in Counselman v. Hitchcock, 142 U. S. 547, 35 L. Ed. 1110, 12 S. Ct. 195, holding that Rev. Stat. §860, a statute identical in all material respects with Rev. Stat. §859, was not a sufficient substitute for the constitutional privilege of refusing to answer self-incriminating questions. Under that decision, a witness who is offered only the partial protection of a statute such as §§859 and 860 — that his testimony may not be used against him in subsequent criminal proceedings — rather than complete immunity from prosecution for any act concerning which he testifies may claim his privilege and remain silent with impunity."

The quotation of the colloquy between Representative Washburn and Representative Taylor, cited in Petitioner's Brief, would indicate that it was the intent of Congress that the law would not be binding upon State courts, nor would it abolish local rules of evidence, and would only apply in a case where a witness was compelled to testify against his will, in which case it would violate a portion of the Constitution of each of the several States against compulsory confessions and self-incrimination. It is admitted

that the law of Maryland, as well as the law of the United States, provides that no person may be compelled to be a witness against himself in any criminal prosecution, but that is not the issue here.

III.

Petitioner waived the privilege, if any, accorded him by the statute by testifying voluntarily to the facts which were subsequently admitted in his trial.

It is to be noted that the statute (Title 18, Section 3486 U. S. C. A.), if it does anything, establishes a privilege to which any person being a witness before a Congressional Committee may avail himself, rather than establishing a substantive commandment relating to a rule of evidence. In fact, Respondent, himself, in his Brief, refers to Petitioner's right under the statute, as a privilege, and the statute itself refers to "the said privilege". And, while the statute itself makes no reference to testimony being either voluntary or involuntary, the fact that it uses the word "privilege", would indicate that such privilege may be waived or availed of, as the particular circumstance suits the person to whom it applies.

Petitioner's testimony given before the Senate Committee was given mainly without any claim of self-incrimination. He has argued in the past that he was under a compulsion to testify, which is obviously not correct, because he did refuse to answer certain questions, availing himself of the *privilege* given him under the Fifth Amendment of the Constitution of the United States, as is clear from the Record and was actually told (Record, pages 63 and 64) that he was not under any compulsion to answer. Notwithstanding this, and notwithstanding that he was acting upon

advice of counsel, he proceeded to testify to matters which clearly had some bearing upon his conviction for conspiracy to violate the lottery laws of the State of Maryland, although he may have been under the misapprehension that he was safe because limitations had run prior to the time of his testifying before the Congressional Committee. It cannot be disputed that Petitioner did have the right to refuse to testify upon the grounds of self-incrimination if he chose to avail himself of that privilege, and it is respectfully urged that, having failed to do so, he has no right to object to the use of such testimony against him in a proper case in a State court, and in the absence of a complete immunity granted by the statute, the evidence was properly admitted. *Counselman v. Hitchcock, supra; United States v. Bryan, supra; United States v. Jaffee,* 98 Fed. Supp. 191; *United States v. Ralley,* 96 Fed. Supp. 495; *Henze v. State,* 154 Md. 332, 140 A. 218. On the above cases and many others, it is well settled doctrine that testimony given under oath at a former trial, before an investigating committee, or elsewhere, is admissible in the trial of a case if the testimony was voluntary and the privilege of refusing to testify because of self-incrimination was waived. Certainly if an accused person may waive the constitutional privilege, he may waive a privilege granted him by an Act of Congress, and having waived it, cannot properly object to the use of his voluntary confessions or admissions against him in a subsequent proceeding. This was substantially what was determined in the case of *May v. United States,* 175 Fed. 2d 994, although that particular case differs in its facts from the case at bar.

Petitioner argues that he was under the compulsion and stress of being charged with a misdemeanor should he refuse to testify. This is obviously untrue from the Record.

The case of *Nelson v. United States,* No. 11353, U. S. Court of Appeals for the District of Columbia, July 2, 1953, cited by Petitioner, is completely different from the instant case because in that case, the Court said that:

> "The Committee threatened prosecution for contempt, if he refused to answer; for perjury if he lied; and for gambling activities, if he told the truth."

There was no such compulsion and no such threats made to William Adams, and it is impossible to find any evidence of such an atmosphere in the Record in this case. His testimony was freely, voluntarily and even eagerly given, and in view of the fact that he was accompanied by counsel, it is almost impossible to believe that he was not advised of his constitutional right to refuse to testify if he so desired. In fact, the constitutional right to refuse to testify on grounds of self-incrimination under the Fifth Amendment, mainly as a result of the activities of this Senatorial Investigating Committee, has become via the television, almost a household word. There is nothing in the Record to indicate, as argued by Petitioner, that the United States lured the Petitioner into testifying with a false hope, nor that the sovereign State of Maryland has been guilty of convicting one of its innocent citizens through trickery and deceit. William Adams, the defendant in the case at bar, is upon his own voluntary admission guilty of the crime of conspiracy to violate the lottery laws of the State of Maryland.

CONCLUSION

Upon the foregoing authorities and argument, it is respectfully submitted that the court below has not erred in affirming the verdict of the Criminal Court of Baltimore City; that the testimony given by the Petitioner before

the Senate Investigating Committee was voluntary and he thereby waives his immunity or privilege, if any; that Congress never intended that Section 3486 of Title 18 U. S. C. A. should apply to rules of evidence in courts of the State of Maryland, and that even had Congress so intended, it has no power to do so.

Respondent, therefore, respectfully submits that no rights of the Petitioner have been violated and the decision of the court below should be affirmed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

No. 271.—October Term, 1953.

William Adams, Petitioner, v. State of Maryland.	On Writ of Certiorari to the Court of Appeals of Maryland.

[March 8, 1954.]

Mr. Justice Black delivered the opinion of the Court.

In response to a summons the petitioner Adams appeared to testify before a Senate Committee investigating crime. Answering questions he confessed to having run a gambling business in Maryland. That confession has been used in this case to convict Adams of conspiring to violate Maryland's antilottery laws. The trial court sentenced Adams to pay a fine of $2,000 and serve seven years in the state penitentiary. The Court of Appeals of Maryland affirmed, rejecting Adams' contention that use of the committee testimony against him was forbidden by a provision in a federal statute. — Md. —. That provision, now 18 U. S. C. § 3486, set out in full below, provides that no testimony given by a witness in congressional inquiries "shall be used as evidence in any criminal proceeding against him in any court . . . ."[1] The Maryland Court of Appeals held that Adams had testified before the Committee "voluntarily" and was therefore not protected by § 3486. We granted certiorari because a proper understanding of the scope of this Section is of importance to the national goverment, to the

[1] "No testimony given by a witness before either House, or before any committee of either House, or before any joint committee established by a joint or concurrent resolution of the two Houses of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committed in giving such testimony. But an official paper or record produced by him is not within the said privilege." 11 Stat. 156, 12 Stat. 333, 52 Stat. 943, 62 Stat. 833, 18 U. S. C. § 3486.

states and to witnesses summoned before congressional committees. 346 U. S. 864. In this Court Maryland contends that the Section does not bar use of Adams' testimony because: (1) He waived the statutory "privilege" by testifying "voluntarily," meaning that Adams failed to object to each committee question on the ground of its tendency to incriminate him; (2) the Section should be construed so as to apply to United States courts only. If these two statutory contentions are rejected, we are urged to hold that Congress is without constitutional power to bar the use of congressional committee testimony in state courts.

(1) Circumstances may be conceivable under which statements made in the presence of a congressional committee might not be protected by § 3486. For example, a person might voluntarily appear and obtain permission to make a statement in a committee's presence, wholly for his own advantage, and without ever being questioned by the committee at all. But Adams did not testify before the Senate Committee under any such circumstances. He was not a volunteer. He was summoned. Had he not appeared he could have been fined and sent to jail. 2 U. S. C. § 192. Nor does the record show any spontaneous outpouring of testimony from him. The testimony Maryland used to convict him was brought out by repeated committee questions. It is true that Adams did not attempt to escape answering these questions by claiming a constitutional privilege to refuse to incriminate himself. But no language of the Act requires such a claim in order for a witness to feel secure that his testimony will not be used to convict him of crime. Indeed, a witness does not need any statute to protect him from the use of self-incriminating testimony he is compelled to give over his objection. The Fifth Amendment takes care of that without a statute. Consequently, the

construction of § 3486 here urged would limit its protection to that already afforded by the Fifth Amendment, leaving the Section with no effect whatever. We reject the contention that Adams' failure to claim a constitutional privilege deprived him of the statutory protection of § 3486.

(2) Nor can we hold that the Act bars use of committee testimony in United States courts but not in state courts. The Act forbids use of such evidence "in any criminal proceeding . . . in any court." Language could be no plainer. Even if there could be legislative history sufficiently strong to make "any court" mean United States courts only, there is no such history. The few scraps of legislative history pointed out tend to indicate that Congress was well aware that an ordinary person would read the phrase "in any court" to include state courts. To construe this phrase as having any other meaning would make the Act a trap for the unwary.

It is suggested, however, that regardless of the plain meaning of § 3486 as originally passed an event since its passage should cause us to give it an entirely different meaning. The Section stems from an 1857 Act of Congress designed to grant committee witnesses immunity from prosecution in order to compel them to give self-incriminating testimony despite the Fifth Amendment.[2] Thirty-five years later in *Counselman* v. *Hitchcock*, 142 U. S. 547, this Court held that an act not providing "complete" immunity from prosecution is not broad enough to permit congressional committees to compel witnesses to give incriminating testimony. Section 3486 does not provide "complete" immunity. The original purpose of Congress to compel incriminating testimony has thus been frustrated.[3] It is argued that Congress could

[2] Act of Jan. 24, 1857, 11 Stat. 156.

[3] See *United States* v. *Bryan*, 339 U. S. 323, 335–337.

not have intended to afford any immunity to criminals unless it was thereby enabled to compel them to testify about their crimes. Therefore, it is said, § 3486 should now be given the narrowest possible construction—made effective only when the Fifth Amendment privilege is claimed, and held applicable only to United States courts. Because Congress did not get all it hoped, we are urged to deny witnesses the protection the statute promises. But a court decision subsequent to an act's passage does not usually alter its original meaning. And we reject the implication that a general act of Congress is like a private contract which courts should nullify upon a showing of partial or total failure of consideration. Moreover, Congress has kept the statute in force more than sixty years since the *Counselman* decision. And in 1938 Congress reenacted the statute making changes deemed desirable to insure its continued usefulness. 52 Stat. 943. Our holding is that *Counselman* v. *Hitchcock* in no way impairs the protection afforded congressional witnesses by § 3486.

(3) Little need be said about the contention that Congress lacks power to bar state courts from convicting a person for crime on the basis of evidence he has given to help the national legislative bodies carry on their governmental functions. Congress has power to summon witnesses before either House or before their committees. *McGrain* v. *Daugherty*, 273 U. S. 135. Article I of the Constitution permits Congress to pass laws "necessary and proper" to carry into effect its power to get testimony. We are unable to say that the means Congress has here adopted to induce witnesses to testify is not "appropriate" and "plainly adapted to that end." *McCulloch* v. *Maryland*, 4 Wheat. 316, 421. And, since Congress in the legitimate exercise of its powers enacts "the supreme Law of the Land," state courts are bound by § 3486, even though

it affects their rules of practice. *Brown* v. *Walker*, 161 U. S. 591, 606–608. Cf. *Testa* v. *Katt*, 330 U. S. 386.

The judgment of the Maryland Court of Appeals affirming this conviction is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

MR. JUSTICE FRANKFURTER concurs in the result.

SUPREME COURT OF THE UNITED STATES

No. 271.—October Term, 1953.

William Adams, Petitioner, *v.* State of Maryland.	On Writ of Certiorari to the Court of Appeals of Maryland.

[March 8, 1954.]

Mr. Justice Jackson, concurring.

I am in substantial agreement with the Court's opinion but differ in emphasis.

The only controlling fact for me is that this Act is on the federal statute books. What someone intended almost a century ago when it was passed, or in the 1890's when *Counselman* v. *Hitchcock*, 142 U. S. 547, was decided, I do not know. Since the last event, some thirty Congresses have come and gone, something near 15,000 Congressmen have been elected, not allowing for re-election. How many of them knew of *Counselman* v. *Hitchcock*, how many felt frustrated by it, and how many would have vented their frustration by repeal, I do not know or care. Congress left the Act on the books, and it was there when this petitioner testified. The only question is what it would mean to a reasonably well-informed lawyer reading it.

I do not think it important whether petitioner was a "voluntary" or "involuntary" witness before the congressional Committee or whether he raised the question of his immunity under the Fifth Amendment. No such qualification appears in the Act. The whole object and usefulness of the statute is to relieve the witness of the risks which might induce him to withhold testimony from Congress. It is very customary for one who is asked for information to appear before a committee without requiring the formality of a subpoena. The Act does not

strip one of its protection because he may be a cooperative, or even interested, witness; indeed, its purpose is to protect and thereby encourage cooperation instead of hesitation or resistance.

The statute seems as unambiguous as language can be. If words means anything, the statute extends its protection to all witnesses, to all testimony, and in all courts. It is easy to see, as this case illustrates, the hazard a witness would run otherwise. A lawyer would be warranted from the face of this Act in advising the witness that he had nothing to fear from frank and complete disclosure to Congress. Thus the Act would have accomplished its obvious purpose of facilitating disclosure.

I cannot see the slightest doubt that Congress has power to enact the statute for that purpose. It does not take anything from Maryland. It does not say Maryland cannot prosecute petitioner; it just says she shall not put him to disadvantage on the trial by reason of his cooperation with Congress. It leaves Maryland with complete freedom to prosecute—she just has to work up her own evidence and cannot use that worked up by Congress. The protection to the witness does not extend beyond the testimony actually received. In this case, petitioner was convicted by the State on the admissions he made before the Senate Committee. Section 3486 was thereby violated, and the conviction should be reversed.